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Critical Perspectives on *Musharakah Mutanaqisah*
Home Financing in Malaysia:
Exploring Legal, Regulative and Financial Challenges

by

Hanira Hanafi

A Doctoral Thesis

Submitted in partial fulfilment of the requirements
for the award of The Degree of Doctor of Philosophy
at the School of Government and International Affairs

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2012

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DECLARATION

I hereby declare that no portion of the work that appears in this study has been used in support of an application of another degree in qualification to this or any other university or institution of learning.

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ABSTRACT

Critical Perspectives on *Musharakah Mutanaqisah* Home Financing in Malaysia: Exploring Legal, Regulative and Financial Challenges

Hanira Hanafi

As shelter is one of basic needs for the human beings, the financing for housing need is also an essential need. Since individuals are not in a position to pay for their houses in one go, the availability of mortgage is an imperative in ensuring homeownership. Islamic mortgage as being the housing finance tool of Islamic banking and finance offers a home ownership for those who seek for *halal* alternative. There are indeed various type of instruments used as an underlying contract for Islamic mortgage, which comprise of debt based financing (*murabaha*, *istisna'*, *ijarah*, *bay' bithaman ajil*) and equity based financing (*musharakah mutanaqisah*). As the debt based products of Islamic mortgage are criticised for mimicking the conventional counterparts, the introduction of equity product of home financing based on *musharakah mutanaqisah* (MM home financing) is deemed to become a better alternative, which capable of fulfilling the true spirit of *Shari'ah* and overcome the shortcomings of debt based products.

As MM based Islamic mortgage has just been in the Malaysian market for seven years, there are many issues surrounding its implementation. This study, therefore, aims to explore and critically analyse the supply and demands side issues related to MM home financing by paying particular attention to challenges and prospects of MM home financing in Malaysia. In particular, this study explores legal and *Shari'ah* related operational issues associated with the implementation of MM home financing and also examine the prospects of this product through customers' perceptions and expectations.

In achieving the aims, this study employed mixed method whereby the data obtained from the questionnaire survey and interviews. The sample size of the questionnaire survey is 260 respondents who have either Islamic or conventional mortgage and are from Klang Valley area of Malaysia. The interviews were conducted with 19 individuals who are actively involved in the implementation of MM home financing in Malaysia including Islamic bankers, Islamic economists, *Shari'ah* advisor and regulator.

The interview finding revealed that besides several legal issues such as inadequate of legal framework, treatment in the event of default, non-standardised agreement, issue of ownership and *Shari'ah* issues such as use of purchase undertaking or *wa'd*, there are number of other issues involved in MM home financing. These include *takaful* and its maintenance, issue of rental benchmarking. All these together are believed to hinder and 'pollute' the MM home financing operation. The study also noted the problems that also arose from the banks and customers itself.

The finding of the survey, also, revealed that the customers' awareness on Islamic mortgage products is still very low, particularly for MM home financing. In addition, take-up reason for Islamic mortgage is mainly due to religious factor and non take-up reason is due to the price. However, it is very interesting to note that the majority of the respondents expected Islamic mortgage to be capable of safeguarding their interest. In other words, majority of the respondents expect Islamic mortgage could realise the inherent advantages associated in it which capable of serving the individual but also social interest. This factor is crucial to the Islamic banks, as this position seems generally agreed and expected by majority of the respondents. Therefore, capable of fulfilling this factor will ensure a promising future for MM home financing as the price for MM home financing is as competitive as the conventional counterparts making Islamic mortgage having extra advantages for the customers to opt for.

Based on the findings of the study, several recommendations are also proposed in order to revive the soul and spirit of *Shari'ah* which ultimately portray the efficiency and effectiveness of Islamic finance particularly in dealing with home financing for the benefit of all the stake holders.

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LIST OF ABBREVIATION

AAOIFI	Accounting and Auditing Organisation for Islamic Financial Institutions
BAFIA	Banking and Financial Institutions Act
BBA	<i>Bay' Bithaman Ajil</i>
BIMB	Bank Islam Malaysia Berhad
CCH	Confederation of Cooperative Housing
EPF	Employee Provident Fund
FHA	Federal Housing Administration
IBA	Islamic Banking Act
IBF	Islamic Banking and Finance
IDB	Islamic Development Bank
IFSB	Islamic Financial Services Board
IRTI	Islamic Research and Training Institute
KFH	Kuwait Finance House
MBSB	Malaysia Building Societies Berhad
MHLG	Ministry of Housing and Local Government
MIFC	Malaysia International Islamic Financial Centre
MOF	Ministry of Finance
MM	<i>Musharakah Mutanaqisah</i>
NAHC	National Association of Housing Cooperatives
PLS	Profit and Loss Sharing
REHDA	Real Estate and Housing Developers' Association Malaysia
RHS	Rural House Service Loan Programme
SC	Securities Commission
UK	United Kingdom
USA	United State
VA	Veteran Affairs

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Home or shelter is one of the basic needs for human being. The availability of home to people is imperative as failure to access to home or shelter would also inevitably, denying people to other basic rights for instance, safety, health and education. In view of this importance, Islamic banks have provided various schemes for home ownership particularly to the Muslims who seek for *halal* alternative or *Shari'ah* compliant mortgage.

In the early inception of Islamic Banking and Finance (IBF) in Malaysia in 1983, the availability of Islamic mortgage is only dominated by a single instrument or product known as *Bay Bithaman Ajil* (BBA) home financing or sale with deferred price. It is basically designed on the basis of debt based financing with the element of *bay' inah* contract, which the amount of financing facility could be paid by the customers to the banks on a deferred payment basis agreed by both parties throughout the tenure of the financing and it is normally on the fixed payment monthly instalment.

Until presence, there are various issues associated with the implementation of BBA home financing. Such issues include BBA global acceptability from *Shari'ah* point of view, prohibition of *gharar* for the case of financing an uncompleted property, rebate, price and the issue of form against substance which mimicking conventional housing loan. These issues indirectly urge the government, particularly the Central bank of Malaysia to encourage a new mode of Islamic home financing which is more equitable and reflect to the spirit of *Shari'ah*.

Moreover, over reliance on debt based financing which is deemed similar to its conventional counterpart and the advantages of equity based financing over debt based financing advocated by previous Islamic economic scholars has further encouraged the Central bank of Malaysia to encourage the Islamic banks to introduce equity based financing, particularly *musharakah mutanaqisah* (MM) as a mode of Islamic home financing.

Based on the literature, MM home financing derived from *musharakah* contract is superior over any debt based financing as the element of profit and loss sharing is considered to be

closer to justice and the spirit of *Shari'ah*. Therefore, it is deemed to be a better alternative to BBA home financing. MM home financing is arguably able to resolve some issues that are associated with BBA home financing. Among others, with the implementation of MM home financing, there is less reliance to debt based financing which is influenced by the conventional counterpart. The issue of *gharar* in the case of sale of uncompleted houses should also able to be resolved as the sale of a house under construction is under the purview of forward lease concept in MM home financing. MM home financing is also as competitive as its conventional counterpart because the monthly instalment is more flexible with no selling price issue as opposed to BBA home financing, which ultimately also resolves the issue of rebate in the BBA home financing. More importantly, the concept of MM home financing seems to reflect the spirit of *Shari'ah* as it is capable of promoting justice to the parties and removing harms that are normally associated with debt based financing and ultimately safeguarding the interests of a bank and its customer.

MM home financing can be regarded a new Islamic home financing product available in the IBF market for the last 7 years. Presently, there are only 7 out of 21 Islamic banks, willing to offer MM home financing in Malaysia. Besides the intention to comply with the encouragement by the Central bank of Malaysia in reducing over reliance to debt based financing, some of these banks which introduce this new mode of financing, for example OCBC Al-Amin, is actually slowly intend to phase out from the controversial BBA home financing and some of the banks for example Maybank Islamic, are actually intend to provide variety of Islamic home financing products since BBA home financing remains dominant as a single product for 30 years in the IBF market.

Since MM home financing is relatively new in the market, the product experiences many issues surrounding its implementation which influenced its inherent capability of becoming a better Islamic home financing product. Therefore, the aim of this study is to examine the challenges and prospects of the current practice of MM home financing in Malaysia, particularly its implementation and its future prospect as a better home financing product, which reflect the spirit of *Shari'ah*.

1.2 AIM AND OBJECTIVES

This research aims to explore and analyse the legal, regulative and financial aspects of the MM Islamic home financing in Malaysia through the perceptions of customers, bankers/financiers and *Shari'ah* scholars. By doing so, this study aims to explore the challenges and prospects of MM as an alternative mode of Islamic home financing in Malaysia. Therefore, a thorough examination and analysis on the current state of Islamic house financing products and any related issues related thereto are also investigated.

The objectives of the study are:

- to develop a clear understanding of MM practises from the Islamic banks and experts in Islamic home financing;
- to critically analyse legal framework governing the implementation of MM;
- to critically analyse the legal and *Shari'ah* issues and other related challenges in the implementation of MM;
- to examine the banks and customers' acceptance of MM and their perceptions and expectations of Islamic home financing and its prospects in the future; and
- to develop a discursive approach to the issue in question by giving further meaning to the findings and hence developing an integrated understanding on MM home financing.

This study, hence, focuses on the issues of Islamic home financing in the Malaysian Islamic banking system that has developed significantly in the recent decades.

1.3 RESEARCH QUESTIONS AND HYPOTHESES

In responding to the identified aims and objectives, the following research question and sub-questions are developed in operationalizing the research. The main research question, hence, is:

What kinds of problems are being observed in the operation of MM-home financing and what kind of auxiliary solutions have been provided to tackle such problems in the Malaysian financial system?

In order to respond to this comprehensive question, the following sub-research questions are developed:

- (i) How MM is implemented in Malaysia?;
- (ii) What are the laws governing the implementation of MM?;
- (iii) Is the existing law exhaustive in governing the MM?;
- (iv) What are the *Shari'ah* and legal issues in MM?;
- (v) What are the problems faced by the banks in implementing MM?;
- (vi) Are the customers aware of the existence of MM?;
- (vii) What are the general perceptions and expectations of Malaysian towards Islamic home financing in general?;
- (viii) Are the expectations required by the customers reflected in the MM home financing?; and
- (ix) Does MM provide better alternative than BBA home financing?

It should also be noted that in addition to the defined research questions, corresponding hypotheses are developed and discussed in detail in Chapter 6, the research methodology chapter.

1.4 RESEARCH RATIONALE AND MOTIVATION

Several factors triggered the interest in this area of research. Firstly, whether MM serves as a better alternative to BBA home financing or it only constitutes to the other varieties of Islamic home financing products. Secondly, literatures advocate that equity based financing is superior than debt based financing, as the former more reflects the spirit of *Shari'ah* and capable of providing justice to contracting parties. As such, it is interesting to examine how the Islamic banks in Malaysia implement MM home financing in the environment that do not really support equity based financing and how far the concept of debt based financing has influenced the implementation of MM home financing. Lastly, it has been argued that conventional sub-prime mortgage is one of the causes which contributes largely to the

financial crisis. Islamic finance, particularly in this case Islamic mortgage, which is based on equity financing, is advocated as resilient to the financial crisis. Therefore, it is imperative to evaluate the current practice of MM home financing. The researcher has taken one step forward filling this gap by studying this subject at PhD level.

1.5 RESEARCH METHODOLOGY

This study utilised primary data collected through a questionnaire survey and semi-structured interviews, for both the research methods purposive sampling has been utilised. In total, there are 260 respondents for the questionnaire survey and 19 interviewees. The construction of the questionnaire and semi-structured interviews was mainly developed from the previous studies, with some modifications made to achieve the research objectives and answer the research questions.

Regarding the semi-structured interview, the sample consisted of individuals involved directly in the implementation of MM-home financing in Malaysia. They comprise of bankers who have MM home financing product in their banks, legal experts responsible in preparing the relevant legal documentations also advising the banks on its implementation, *Shari'ah* scholars/advisors who advise the banks in introducing MM home financing, Islamic economists who advocate the need of having the MM home financing and the regulator which is the Central Bank of Malaysia, as it is a governmental body which promote the implementation of Islamic banking market and push for equity based financing to be implemented in Islamic banks in Malaysia.

The questionnaire survey was analysed by using non-parametric tests consisting of the descriptive analysis and mean value calculation in SPSS. In addition, cross-tabulation, Kruskal Wallis, Man Whitney U Test, Chi-square tests and factor analysis were employed. The primary data from semi-structured interviews were analysed through coding method based on thematic analysis.

1.6 SIGNIFICANCE OF THE STUDY

This study aims to explore a particular area, which was not been explored in detail, as the lack of material in the literature indicates. Thus, the significance of the study mainly emerges from its response to the observed gap in the literature. These can be listed as follows:

- (i) This study is an academic research of a specific instrument of Islamic home financing which has not been widely covered by the existing literatures particularly on empirical evidence;
- (ii) This study offers an essential ingredients for the Islamic bankers to formulate appropriate strategies to attract Malaysian irrespective of their religious affiliations to opt to Islamic home financing particularly MM home financing as the principles of profit and loss sharing contract proved to reflect the spirit of *Shari'ah* and its inherent advantages can safeguard the interests of the contracting parties;
- (iii) This study helps the existing efforts made to improve the perception and awareness of Malaysian towards Islamic home financing and their expectations toward Islamic home financing in Malaysia;
- (iv) The suggestions provided by this study can be implemented to reduce the problems related to operation of MM home financing in Malaysia;
- (v) This study supplies rich information to the industry about the current demand of Islamic home financing products, which will enable the industry to improvise and enhance the current practice of MM home financing in order to fulfil the demand–supply gap with the MM home financing product which is genuinely equity based in accordance with the spirit of *Shari'ah*;
- (vi) This study also provides certain information, which can assist the industry in developing appropriate marketing strategies to promote their products;
- (vii) This study establishes that there is a bright future for MM home financing which has the potentials to fulfil the expectations of Muslims and non-Muslims; and
- (viii) This study also renders a source of reference to policy makers and academicians, which is rather scarce particularly involving a particular instrument of Islamic home financing

by providing a holistic approach on the challenges and prospects of MM home financing based on empirical evidence.

1.7 ORGANISATION OF THE STUDY

This research consists of 10 chapters:

Chapter 1, being the *Introduction* chapter provides an overview of the study and research motivation. There is also a section which lists down the research questions, aims and the rationale of the study. A brief discussion on methodology and the significance of the study are also included in this chapter.

Chapter 2, *Home Financing: Literature Review*, presents a discussion on the relevant literature, particularly on the Islamic Home Financing. The range of products offered by Islamic banks for house financing are thoroughly discussed which include *BBA*, *istisna'*, *ijarah* and MM. A discussion on the salient features of each product from legal and *Shari'ah* perspectives is also provided. The chapter also presents a discussion on the other types of homeownership, namely social housing and cooperative housing.

Chapter 3, *Malaysian Housing Market*, focuses on the Malaysian Housing Market and finance. It also discusses the general providers of Islamic mortgage, product available for house financing and relevant regulations related to the interest of house buyers.

Chapter 4, *Islamic Housing Finance Provision in Malaysia: Market, Products and Institutions*, presents the relevant legal provisions related to Islamic house financing in Malaysia. In addition, it focuses on the regulatory framework for Islamic house financing in Malaysia, followed by a discussion on the national and international comparison of housing scheme. The discussion includes BBA home financing in Malaysia and its related issues.

Chapter 5, *Musharakah Mutanaqisah Home Financing in Malaysia: An Exploratory Study*, discusses the strength and limitations of *musharakah* as equity based financing. The basic principles of *musharakah* are also included as MM is derived from *musharakah*. Then literature on MM in Malaysia is also reviewed and presented as to highlight its current state of this new product of Islamic home finance.

Chapter 6, being the *Research Methodology* chapter discusses in detail the entire research process by referring to the research framework, methodology and methods used, and also present some limitations in conducting this study.

Chapter 7, *Searching for Challenges and Prospects of Musharakah Mutanaqisah Home Financing in Malaysia: Interview Analysis*, analyses the interview analysis using a thematic analysis approach and also its interpretations.

Chapter 8, *Exploring Customers' Perceptions and Expectations on Islamic Home Financing in Malaysia: Questionnaire Analysis*, analyses the survey data using SPSS. The survey data includes the customers' perception of Islamic home financing and their reasons for choosing or not choosing Islamic mortgage, discusses attitudes and expectations towards Islamic housing finance, and customers' awareness on Islamic mortgage products.

Chapter 9, *Contextualising the Findings: An Interpretative Discussion*, provides an integrated discussion of the findings and relevant existing literature related to it, together with the researcher observations made through meaning making process from the findings of the survey and interviews.

Chapter 10, being the *Implications and Conclusions* chapter concludes the research by giving implications, limitations and recommendations to improve the current practice of MM home financing in Malaysia.

CHAPTER 2

HOME FINANCING: LITERATURE REVIEW

2.1 INTRODUCTION

Besides education, health services, sanitation, water supply and adequate nutrition, home or shelter can be regarded as one of human basic need, without which life would be impossible. Basically, everyone needs a home as a shelter, a safe place where a family can be together. According to Maslow's hierarchy of needs, shelter is recognised as one of the basic needs which is considered to be one of the literal requirements for human survival.

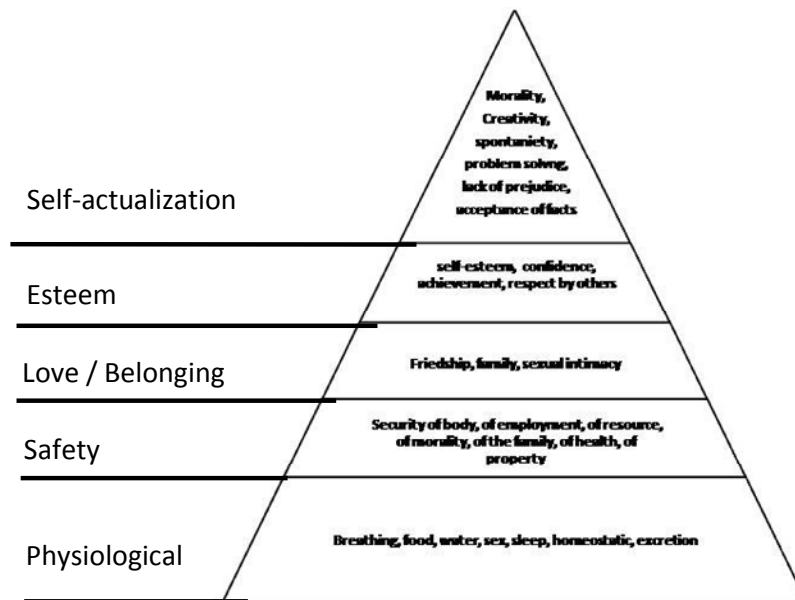


Figure 2.1: Maslow's Hierarchy of Needs (1954, 1970)

As depicted in Table 2.1, human needs are explained in the pyramid where the most basic needs are placed at the bottom. The importance of home as shelter is clearly seen under the physiological needs, which is considered the base for the achievement of other needs. When any of these physiological needs is absent or critically in short supply, a condition of absolute under development exists. Lack of shelter or accommodation undermines one's full engagement with various aspects of life.

In addition, home is not only considered as a consumption good, it is also treated as an investment good (Malpezzi, 1990). It will help the homeowner to increase wealth in the manner that he can sell the property and obtain profit, if any. Moreover, unlike other assets for examples stocks or shares, the service provided by housing is not only enjoyed by the homeowner, but a third party may enjoy it without affecting its ultimate asset value. In other words, the owner may live in the house as owner occupier or let it out and enjoy regular income (Harriot and Matthews, 1998: 52). In term of social perspective, homeowners support their neighbourhood through their participation in crime prevention and support public schools which can enhance the status and quality of the community as a whole (Haurin *et al*, 2002).

The main difference between a house and other basic commodities like car, furniture and household groceries, is its high price. This is because housing is an expensive item to produce. It is normally constitutes the most expensive item in household budget. The high cost of housing means that those who wish to own the house invariably have to find external source to finance them, which normally comes from the financial institutions. This is where the role of financial institutions, government and other related bodies come into place to provide home financing. Policy makers, therefore, have an obligation to ensure access to this indispensable asset through an efficient financial intermediation system (Ebrahim, 2009: 2). Moreover, an efficient mortgage finance system is an imperative way for economic development and consequently its growth, as articulated by Jaffee and Renaud (1997):

“Mortgage market development is likely to be a key factor in overall financial market development. In particular, an efficient mortgage market will act as a positive externality for the other capital markets, creating pressure for higher efficiency in these markets. On the other hand, a poorly functioning mortgage market is likely to ‘pollute’ other financial markets with its inefficiency”.

2.2 MODERN FINANCIAL TECHNIQUES FOR HOME FINANCING (CONVENTIONAL HOME FINANCING)

For the purpose of this research, the discussion on the conventional modern financial techniques for home financing available in the UK and USA are included to provide a review on the mode and instruments of mortgages in these developed countries with an advanced financial sector.

2.2.1 Mortgage Instruments in United Kingdom

Generally, there are various types of mortgages available to the house buyers in the UK with different types of paying back schemes. The main method of paying back can be classified into two types: capital and interest, and interest only (mortgageguide.uk).

Capital and interest scheme also known as ‘repayment mortgages’ operates in the manner that the house buyers will simultaneously pay a portion of a loan and its interest. The amount of capital which is repaid gradually increases over the years, while the amount of interest decreases. This scheme costs a larger monthly payment compared to the interest only. This is because the house buyers are actually paying off their loan gradually. Therefore, capital and interest scheme is most ideal for the house buyers who intend to pay the loan immediately and later guaranteed the full payment of the loan at end of mortgage tenure (bbc.news).

On the other hand, the interest only type of mortgage is meant for those who prefer the payment low for the first few years of the mortgage. The payment via this scheme is only for the interest and it is inherently risky because the house buyers are merely paying off the interest, and not the loan itself. Instead of repaying the loan each month, the house buyers pay into a long-term investment or savings plan which should generate enough returns to repay the total loan at the end of the mortgage term. However, in the event the investments do not generate the return as planned, the house buyers will have a difficulty to repay the loan. The most well-known types of investments related to this scheme are ‘endowment mortgage’, ‘pension mortgage’ and ‘Individual Saving Account’ (mortgageguide.uk).

In the case of an endowment mortgage, the borrower is required to pay for two monthly payments; the first covers the mortgage interest, while the second is for the insurance companies for the endowment contract. The latter has normally been invested in the stock

and shares where the capital in the endowment increases at the end of the term of the mortgage to repay the outstanding capital. In situations where the investment is performing very well, the borrower would be able to accumulate more funds than the amount required to repay the loan. However, the investment via endowment contract is not considered risk-free since it involves in the stock market which sometimes, may lack sufficient funds to repay the loan. Ultimately, the house buyer has to seek for an independent financial assistance.

A pension mortgage is mainly for self-employed people whereby the monthly payments are made up of interest payments on the loan and contributions to a pension scheme. When the borrower retires, there is a lump sum to pay off the loan and a pension. However, since the pension is designed primarily to produce income in retirement, the borrower is required to actively monitor any targeted cash amount in order to enable for the repayment of the mortgage (bbc.news).

Apart from that, Individual Saving Account is a mortgage which requires the borrower to pay the interest to the lender for the amount borrowed, and at the same time, invest in the Individual Saving Account plan using cash money, life assurance or stocks and shares. The investment is targeted to increase over the term of the mortgage in order to repay the outstanding loan borrowed. Similar to the endowment mortgage, Individual Saving Account mortgage is also exposed to the risks in the stock market. Furthermore, Individual Saving Account is not guaranteed to continue indefinitely and currently, Individual Saving Account contributions are restricted to a maximum of £7,200 in any tax year (mortgageguide.uk).

2.2.2 Mortgage Instruments in the USA

Generally, the instruments of mortgage available in the USA, to a certain extent, are akin to Malaysia. This is due to the involvement of both governments as one of the providers for the mortgage designed for their employees and also the financial institutions which offer mortgage for qualified people.

The instruments of mortgage in the USA can be divided into two types which are based on the provider and the types of mortgage program itself. The first type is referred to the loan provided by government which is known as government mortgage loans consisting of Federal Housing Administration (FHA), Veteran Affairs(VA) and Rural Housing Service Loans Program (RHS), and the conventional mortgage provided by the financial institutions or

banks other than the three mentioned earlier. On the other hand, the second type refers to various mortgage programs classified as fix rate loans, variable and adjustable rate loans and their combinations.

2.2.2.1 Government and Conventional Mortgage Loans

As housing remains as one the social concerns, Federal Government has developed VA, FHA and RHS in order to provide affordable housing finance for the qualified people. The main difference between these three is that VA and FHA is part of the United States Department of Housing and Urban Development office, while RHS is placed under the responsibility of the United States Department of Agriculture. Following that, down payment is unnecessary for purchasing the house under the VA and RHS loans. Further, the approval of the loan is easier compared to a conventional one. On the other hand, FHA is designed to help house buyers with a less than perfect credit history, where the requirement for the down payment for purchasing the house is only 3%, and subject to special case. The borrower may also qualify for a zero down payment. However, under the special case scheme, he must fulfil two conditions, namely he has to buy the insurance amounting to 1.5% of the total loan amount, and pay a monthly premium which costs 1.5% of the loan amount divided by 12 months (mortgage-x.com).

Since the federal government is the main provider for these loans, they are considered to be very secure in such a way that should the borrowers are default in their payment, the respective organisations will pay the financiers a certain amount guaranteed of the total loan. The amount guaranteed for VA is 40% of the loan amount up to a maximum of \$20,000, while the FHA insures 100% of the loan, thus eliminating the lender's risk. This situation is contrary to the normal conventional loan, for instance, the Fannie Mae loans which do not benefit from any government guarantee, but the borrowers who are qualified for this loan will be rewarded with a slightly lower interest than the FHA.

2.2.2.2 Mortgage Loan Programmes: Term of Repayment

Mortgage loan programmes based on the term of repayment can be divided into three types: fixed rate, adjustable rate or a combination of the two. Fixed rate offers a constant monthly repayment throughout the life of the loan with the various tenures available which are 10-30 years. The rate charged is depended on the term of repayment. The shorter the term, the lower the interest rate charged. On the other hand, hybrid loans represent the combination of these

two. Examples of these are fixed period ARMs with a certain period of fixed payment before the interest rate changes; convertible ARMs with an option to convert ARMs to fixed rate mortgage after a certain period of time, and graduated payment mortgages whereby mortgages have low initial monthly payments, which would then gradually increase through the later years (mortgage-x.com).

2.2.3 Conventional Mortgage in the West: General Issues

The borrowers of conventional mortgage today have much greater choices of product features compared to the borrowers in the past. Further innovations in the modern mortgage for instances, interest-only payments and other longer terms payment, have contributed to the growth of home-occupation. This is because the most of the modern features of conventional mortgage aim at reducing the borrowers' monthly debt service in the initial year of the loan, and therefore, would widen access to home-occupation.

In contrast, "the impact of such mortgages can also be more risky: the interest-only borrower does not accumulate equity as an annuity borrower does, and loans with longer terms expose the borrower to a greater risk of interest-rate or other economic shocks. As a result, both borrowers pay more and the housing finance system may be more fragile" (Scaldon *et al*, 2008:1). However, the borrowers are not really aware of this risk because they are most concerned with the amount of payments.

Furthermore, the risk associated with the new products features is increasing in mortgage debt. In a stable markets and economies, the growth of indebtedness and the longer term for debt is desirable for the economy and the individuals. However, this growth in debt, plus the change in the composition of the debt moving away from standard annuity borrowing and towards more product flexibility which means that the system is more vulnerable to any sudden structural changes in incomes, inflation and employment.

In addition, interest only mortgages are often associated with other mortgage product such as remortgaging (Whitehead and Gaus, 2007). Remortgaging itself should be neutral to the interest rate because sometimes it will cause the complexity and potentially risk as the process itself is the mix and match of different product attributes. Thus, these innovations clearly carry with them greater risks for mortgagors and the housing market alike, especially

when households' ability is considered to increase their housing debt by remortgaging and increasing debt when house prices rise (Scaldon *et al.*, 2008:129).

2.3 ISLAMIC HOUSING FINANCE

Apart from the conventional mortgage discussed in the preceding section, this section thoroughly focuses on Islamic mortgage or Islamic housing finance. The discussion will include the basic principles of Islamic finance and the mode or instruments used for Islamic housing finance.

2.3.1 Islamic Finance: Basic Principles

Islamic finance as one of the area of Islamic economics is seen to be an alternative way to conventional financial system. The injection on the element of moral dimension in Islamic finance aims to deliver a fair and justice to the society as a whole.

Islam as a religion which provides the guidance for the way of life prescribes certain principles governing economic activities and financial transactions with the idea of promoting the well-being of individuals and society. Thus, all economic activities and financial transactions must be done in accordance with religious values based on *maqasid Shari'ah*, interpreted as human well-being (Chapra, 2000). For example, the element of "consent from both contracting parties" in making a transaction is a key point in Islam, which provides a freedom to contract or transaction: this is an essential part of the idea of justice Islam promotes.

The *maqasid Shari'ah* which can help to achieve justice and well-being of all people can only be realised through certain guidelines which include the prohibition of *riba* and *gharar* in the economic activities and financial transactions. This implies that according to Islamic norms all the transactions must be free from *riba* and *gharar*. The prohibition of these practices has been clearly spelled out in several verses of Qur'an and various *Hadith* of Prophet.

2.3.1.1 Prohibition of *Riba*

Generally, *riba* is defined as "unlawful gain derived from the quantitative inequality of the counter values in any transaction purporting to effect the exchange of two or more species which belong to the same genus and governed by the same legal cause" (Bakar,

2008:11). Thus, as interest, it represents fixed return with no particular effort and without impacting the real economy.

Based on the *hadith*¹ of the Prophet, *riba* can be divided into two distinct categories: *riba al-fadl*, i.e. *riba* by excess and *riba al-nasiah*. *Riba al-fadl* is also known as *riba al-buyu'* which is based on the quantity and *riba al-nasiah* is based on the time.

In relation to *riba al-fadl*, the *hadith* illustrates six items in which it represents two commodities and the other four represent the staple food items. According to Bakar (2008), the scholars unanimously referred the commodities to money as mediums of exchange, store and measure of value, which is treated as *ribawi* or usurious items. Therefore, they must be treated on the basis of equal to equal and hand to hand when they are exchanged for each other.

Bakar (2008) further emphasises that *riba al-nasiah* does not necessarily mean additional payment in lieu of postponement of repayment of a loan, but it includes the situation where the exchange of similar *ribawi* item is affected not simultaneously, even for equal counter value. He further gave the example that 1 kg of wheat for 1 kg wheat but not simultaneously transferred can also constitute as *riba al-nasiah*. Therefore, *riba al-nasiah* is not only confined to the situation where the positive return on a loan has been fixed as a reward for waiting or postponement of repayment time. In other words, any situation which involves the difference in the time of exchange will constitute *riba al-nasiah*.

As regards to the rationale for the prohibition of *riba*, it is undeniable that *riba* does contain certain benefit for the people with a surplus of money. This people would receive premium from the loan lent to the other people who are in deficit of money. In spite of the little benefit in practising *riba*, particularly for those who have surplus money, the undesirable effects of *riba* are actually overwhelmed or supersede its benefit. (Bakar, 2008:16).

In addition, *riba* can violate the equity aspects of economic organisation. This situation happens when the borrower is obliged to pay for the interest irrespective whether he will gain

¹Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, -like for like, equal for equal, and hand-to-hand: if commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand. This *hadith* has been narrated in all the authentic compilations.

profit or suffer loss in his business. The situation may deteriorate when the borrower is incapable of paying the interest and declared bankrupt, resulting in the loss of productive potential and unemployment.

Also, the financial system which is based on interest would be security oriented rather than growth oriented. The banks would be more selective to the people with a sufficient security and well-established business in order to ensure a guaranteed return monthly. Hence, this practise will not encourage the economic growth for the large number of potential entrepreneurs, and discourage their innovation. This continuing practice by the banks may result in increasing inequalities of wealth and income. Therefore, it is clear that the disadvantages of *riba* outweigh its advantages.

Furthermore, the practice of *riba* will cause an individual or the banks to become complacent and reluctant to take any risk to obtain profit. This situation is contrary to the principle of *Shari'ah* namely *al-ghunmu bi al-ghurmi* which means profit bears risks, and *al-kharaj bi al-dhaman* which means that an entitlement to profit or gain depends upon the corresponding liability for loss. In short, both legal maxims imply that those who are entitled to the profit must be responsible to the loss as well. These principles of Islamic jurisprudence indirectly show that Islam encourages profit and loss sharing in dealing with a business or transaction. Profit and loss sharing (PLS) dominates the theoretical structures of Islamic finance (Dar and Presley, 2000:1), where it means a contractual arrangement between two or more transacting parties, which allows them to pool their resources which invest in a project and share in a profit or loss. Most Islamic economists' view that PLS based on two main methods of financing, namely *mudaraba* and *musharakah*, is desirable in an Islamic context as an alternative to the practice of *riba*, wherein reward-sharing is related to risk-sharing between transacting parties. This situation is in line with the teaching of *Shari'ah* and the legal maxims mentioned earlier.

2.3.1.2 Prohibition of *Gharar*

As the second major principle of Islamic finance, the prohibition of *gharar* is also important when discussing sale transaction or economic activities, particularly in Islamic housing finance, where a house as the subject matter of sale transaction, is either completed or still under construction. Generally, there is no clear or definite meaning of *gharar* available in the *Qur'an* and the *hadith* of the Prophet. However, an element of *gharar* has been mentioned

widely in various examples of contracts which are prohibited by Islam (Buang, 2000: 41). Literally, *gharar* means danger, peril, jeopardy, hazard or risk (IbnManzur, 1990:314), which involves the uncertainty or indeterminacy in a transaction where the quality and quantity of the commodity on a sale is not predetermined and known. Following that, *gharar* is involved when the rights and obligations of each party are not known or certain during the time of contract of sales or exchanges of services (Siddiqi, 1985: 40).

2.3.1.2.1 Sale of Thing which does not Exists at the Time of Contract.

In the early development of this concept, the reference of *gharar* is always linked to the non-existence of goods during the time of contract concluded. In other words, future goods which have not existed during the time of contract cannot be considered a subject matter of the contract. Otherwise, such a contract is deemed invalid.

Besides other conditions for a valid contract, Islamic legal rules have highlighted the conditions for the subject matter to render the contract valid. In general, a majority of Islamic schools of law namely, *Hanafis*, *Shafi'is* and *Malikis* require the subject matter of the contracts or sales to be in existence and are deliverable assets at the time of the contract (Al-Zuhaily, 2007). Their argument is based on the *hadith* of the Prophet: “Do not sell what you do not have” together with the contention on avoidance of *gharar* in the contract. However, there is an exception to this general rule. This requirement has been simplified in the *salam* and *istisna'* sale where in both contracts, the sales are considered valid albeit the subject matters do not exist when the contracts are concluded. *Salam* sale is defined as the sale of an ascertained future asset that is still in the liability or obligation of the seller for a price that is paid in advance at the time of contract. The subject matter of *salam* sale can be easily found in the market. On the other hand, *istisna'* sale can be defined as a sale based on an order to construct or manufacture an asset according to defined specifications. The main basis to depart from the general rule is based on the consideration that these sales are allowed on the basis of public interest.

On the contrary, the *Hanbalis* differ from the majority rules whereby they maintain that the asset is not required to exist at the time of contract to render the contract valid. Based on the purposive approach, the *Hanbalis* argue that as long as the transacting parties can establish by a reasonable certainty that the asset will exist in the future and is deliverable to the buyer, the sale contract is valid. Hence, according to *Hanbalis*, the requirement is certainty on the

deliverability of the subject matter of sale, not its existence at the time of contract. Modern jurists tend to agree with the view given by *Hanbalis*. Following that *Ibn Qayyim* also explains that the concept of *gharar* is only applied to the uncertainty of the availability of the subject matter, and not merely to its nonexistence at the time of contract. In Malaysia, the same view is taken by the Securities Commission where the resolution has been passed and resolved that sale of future goods is permissible and allowed (SC, n.d: 23).

2.3.2 INSTRUMENT OF ISLAMIC HOUSE FINANCING

Islam recognises the need for house as a place to rest, relax and enjoy legitimate worldly delights as well as worships Allah. According to Al-Qardawi (1960), a house is defined in accordance to the *Quranic* verses as the place in which an individual protects himself from the climatic impacts and in which he finds freedom from the restrictions and pressures of society. In fact, it is a fundamental right that must be enjoyed by every Muslim.

Generally Islamic house financing has been introduced since 1970s with Islamic finance and banking taking root in the national economies. Since Islamic housing products adhere the principles of *Shari'ah*, they are considered an alternative for those who aim to abstain from *riba*.

Based on the fact that Islam prohibits the exchange of money with money as in the conventional housing loan for acquiring the house, Islamic housing finance operates differently where the banks will become the owner of the desired house, and later either sell or lease the house to the customer who initially sought the financial assistance from them. This process is known as Islamic mortgage. This process is normally involves sale and purchase contract between the financiers and the customer as compared to loan agreement between lender and borrower in the case of a conventional mortgage.

Islamic financial institutions have introduced various modes of *Shari'ah*-compliant products in order to accommodate the need of the people who seek homeownership. Several concepts which are based on Islamic contracts have been widely used namely, *murabahah*, *ijara wa iqtina'*, *bay bithaman ajil*, and *diminishing musharakah*. The similarities and differences between these four instruments are summarised in Table 2.1

2.3.2.1 *Murabahah*

Murabahah is the most popular Islamic financing method which is made available in a variety of sectors by various Islamic banks and financial institutions, which can be interpreted as a mark-up sale.

Murabahah sale takes place whenever the seller buys the commodities and offers the commodities for a *murabahah* sale for its price and profit to be agreed. It can be said as a promise which involves three parties: buyer, seller and bank. The bank will not purchase the property unless the buyer specifies and promises to buy it. The bank accepts to purchase the property as requested by the buyer and resell it for the cost price plus profit margin as agreed (Billah, 2008: 21).

The selling price which consists of price and profit must be disclosed and cannot be changed. The bank profits arise from the mark up between purchase price and the selling price (Dar, 2005). The payment would be settled by the customer within an agreed time frame through monthly instalments. The transaction is borne by the bank until the ownership is transferred to the customer.

In fact, there are certain advantages and disadvantages for this product to either customer or the bank. As for the customer, they will benefit in such a way that the monthly instalment is fixed, and therefore, enable the customer to have a better financial planning. Furthermore, the payment of the mortgage normally constitutes a large amount of the total household income and hence requires a good financial planning. Besides, the practice of fully disclosure of the cost and mark up price will guarantee fully transparency for both transacting parties (Laldin, 2006). As for the bank, this product is seen to give advantage because the payment is fixed and predetermined, thus making it low risk.

However, the disadvantage for this product on part of the customer happens when they are making an early payment of the instalments, but do not obtain any reward for that. This is because the rebate for the early settlement is solely based on discretion of the bank. The same happen to the bank if the customers are deferred in their payment, they cannot penalise the customer, and they would therefore include the default margin in the mark up margin. This situation would result in increased cost and that implies that the product is expensive and unattractive to the potential customers in the future (Ebrahim, 2005). In addition, this product

has been widely criticized amongst scholars because it is considered mimicking the conventional product and the act of the bank is seen as the lender rather than seller (Meera and Razak, 2005).

2.3.2.2 *Bay Bithaman Ajil*

Bay' Bithaman Ajil (BBA) is based on *inah* contract where the bank buys and simultaneously sells back the house to the customer on a deferred payment at a price that includes a profit margin agreed upon by both buyer and seller. The scope of BBA is normally for the residential property where it is a contract that the good is transferred upon the contract and the purchase price is paid by installment (Billah, 2008: 22). According to this concept, the fixed rate has been included in the agreement between the buyer and the seller, and this rate will not change and is called as a profit.

In Malaysia, BBA instrument is widely used to finance the house. This method will take place whenever the customer pays ten percent (10%) down payment of the house to the developer. Upon signing sale and purchase agreement, then the customer will approach the bank for the remaining ninety percent (90%) of the total house price. The bank first determines the requirements of the customer in relation to the period and manner of payment. Then the bank purchases the asset concerned and subsequently sells the relevant asset to the customer at an agreed price. The price comprises of the actual cost of the asset of the bank plus the bank's margin of profit and allows the customer to settle payments by installments within a period and in the manner as agreed (MohdYasin, 1997).

In term of its advantages to the customer, like *murabahah*, the application of *BBA* will also enable the customer to have better financial planning due to the fact that it involves fixed monthly payment. The same goes to the banks since this product involves low risk. The customer also is not automatically entitled to get rebate in the case of early settlements since the rebate becomes the sole discretion of the bank. The bank also cannot impose penalty for the late payment as happen in the case of *murabahah*.

However, BBA also become the controversy among the scholars particularly on the contract itself. Based on *BBA* house financing, the relevant financing documents are Property Sale Agreement (PSA) and Property Purchase Agreement (PPA). These documents are very important because they regulate the contract between the bank and the customer. In this

situation, the bank purchases the asset concerned and subsequently sells the relevant asset to the customer at an agreed price comprising the actual cost of the asset of the bank plus the bank's margin of profit. The practice of buying and selling of the asset without proper transfer and ownership does not reflect the real *BBA*. This is because the ultimate intention for *BBA* is to acquire an asset or property, whereas for this practice (sell and buy back), the ultimate intention under *PSA* and *PPA* is simply to obtain cash money to be paid to the house developers.

The parties' intention is to obtain the money seems to reflect the concept of *bay' al-inah*. *Bay' al-inah* is generally known as sale based on the transaction of *nasi'ah* (delay). The (prospective) debtor sells to the (prospective) creditor some object for cash which is payable immediately. The debtor immediately buys the same object for a greater amount for a future date. Thus, the transaction amounts to a loan. The difference between these two prices represents the interest. Such a contract evolved in the early period of Islam and it existed for the fundamental reason that a loan for interest is forbidden because it is equivalent to usury (*riba*). In this contract, there is an economic interest for both the borrower and the lender, which at the same time circumvents the prohibition of usury. The issue which is concerned here is how Islamic law views such contract: whether the sales be allowed *prima facie*, or disallowed because the motive behind the sales is to legalize that which is illegal or usurious (Rosly, 2001).

In relation to the above issue, *Bay' al-Inah* is only permissible under the *Shafi'is* and *Zahiris*, where they argue that since the contracts fulfilled all the requirements of a valid sale, they cannot be nullified by mere assumption of the existence of an illegal ulterior intention to circumvent the prohibition of *riba*. According to them, legal judgment can only be given based on the expressed or manifest intention, not the hidden intention which is left to be judged by God.

Therefore, according to *Shafi'i* school such sales are allowable because in the words of Imam *Shafi'i*, contracts are valid (*Sahih*) by the external evidence that they were properly concluded: the unlawful intention (*niyya* or *qasd*) of the parties is immaterial; it does not invalidate their act, unless expressed in that act. *Shafi'i* considered that the intention of the parties is taken into account only when the invalid intention is explicitly mentioned in the

contract. However, both the *Shafi'is* and *Zahiris* considered *bay' al-inah* as discouraging (*makruh*) despite acknowledging its validity (Rosly, 2001).

On the other hand, the *Malikis* and *Hanbalis* disallow it and consider *bay' al-inah* void because it is a legal trick to circumvent the prohibition of *riba* (usury). This argument is based on the concept of 'plugging the door to harm' (*sadd al dhariah*) where a certain act is prohibited in order to avoid future harm.

2.3.2.3 *Ijarah Thumma Al-Bai'*

Ijarah thumma al-bai' as the mode of home financing involved the combination of two distinct features of Islamic contract namely sale contract and leasing contract. Initially, there will be an agreement made between the bank and customer for the bank to purchase the property specified by the customer. Then the bank will enter into a leased agreement with the customer in which the customer will pay the rent being fixed on a monthly payment on a pre-agreed basis. In exchange of the rent the customer or lessee is entitled to enjoy the usufruct of the property albeit the ownership will remain with the bank as a lessor until the final payment made by the lessee/customer (Dar, 2005).

Upon expiry of the leasing period, the lessee enters into a second contract to purchase the house from the lessor at an agreed price. This practice is quite similar with the conventional hire purchase except the latter is done in the manner consistent with the requirement of *Shari'ah* (Billah, 2008: 23).

As regard to the advantage of this product, the customer will receive full benefit from the appreciation of property value when the house is transferred to him. Besides that, since the bank remains as a lessor and the owner of the house, the customer, therefore will not have to bear any liabilities related to the ownership of the asset (Laldin, 2006). On the other hand, the customer cannot become the owner of the house until the end of the lease period. Furthermore, due to the fact that the rent could be set either quarterly, semi-annually or annually, it will sometimes increase thus make the rent become uncertain, and would cause difficulties for the customer to manage his financial planning throughout the tenure.

As for the lessor/bank, the advantage is that the ownership will remain securely with the lessor, though the lessor has to bear a full risk of the leased property. The lessor can also

enjoy the current rental value of the house due to the fact that the rent could be changed either quarterly, semi-annually or annually. However, if the lessee is making a late rental payment, the lessor cannot charge a penalty for that, except a certain amount for administration fee (Ebrahim, 2005).

2.3.2.4 *Diminishing Musharakah*

Generally, *musharakah* means sharing or partnership, and in the context of business it refers to “a joint enterprise in which the partners share the profit or loss of the joint venture” (Usmani, 1999: 203).

In the context of home financing, diminishing *musharakah* and *ijara* will operate on the basis of partnership agreement, whereby the financing institution and the customer may buy the house which becomes their joint property, according to their rate of participation to the cost. The financing institutions will then lease its share to the customer for a specified periodic rent. The share of the financing institution in the ownership of the house is divided into shares. The customer then buy one of the share through the payment of the rent, the total share of the financing institution will decrease. Proportionately the rental amount is reduced, and the share of the customer in the ownership of the house will increase until he has complete ownership of the house at a period when both the partnership agreement and the lease contract come to an end (Ahmad, 1995: 274).

As the name of *musharakah* suggests, both the financier and the customer will bear the risk associated to the house which includes the appreciation and depreciation of the house subject to the value of their respective shares. The product will also provide advantage to the customer in term of freedom to increase ownership at any time without being charged for the penalty. However, if the customer continually fails to pay monthly payments, his ownership will be reduced (Ebrahim, 2005).

As for the advantage to the financier, the rental paid to them is actually determined by market rental values in which the financier, to a certain extent can revise the rent periodically in order to reflect the current market conditions (Meera, 2005). This product also provides a cushion against inflation and it secures a percentage of the value of the asset to the financier when the value of the house appreciates in inflation (Salama, 1991). However, the fact that

the property has to be appraised each time the financier's ownership is to be bought off would cause disadvantage to the financier because the process can be very costly (Ebrahim, 2005).

Comparison between the Islamic Home Financing Instruments

Table 2.1 depicts the similarities and differences between the four main modes of Islamic home financing applied in countries applying Islamic banking and finance.

Table 2.1: Similarities and Differences between Islamic Housing Finance Instruments

	<i>Murabahah</i>	<i>Bai' Bithaman Ajil</i>	<i>Ijara wa Iqtina</i>	Diminishing <i>Musharakah</i>
Modus Operandi	Buys and then sells house to the customer	Buys and simultaneously sells back the house to the customer	Buys and then rents the house to the customer	Buys together by the bank and customer, and then the former leases the house to the latter
Profit Rate	Profit is calculated by increasing the purchase price of the property	Profit is calculated based on the difference between the sale and purchase price of the property to the customer	Lease payment and account payment towards the cost of buying home is considered as monthly payment to the lessor. In addition, the amount of lease payment and includes the lessor's profit is reviewed annually	Each monthly payment includes a charge for rent and a charge that buys a small proportion of the house itself.
Period of tenure	15 years	Up to 30 years	25 years	25 years
Margin of financing	Up to 80%	Up to 100%	Up to 80%	Up to 90%

Property own by	Customer	Customer	Financier/Lessor	Both the financier and customer own the property according initial share
Type of property	Completed	Completed and Under construction	Completed	Completed and Under Construction
Liability held by	Financier	Customer	Financier/Lessor	Both the financier and customer held the liability according to share
Monthly payment fixed or variable	Fixed	Fixed/Stepped-up	Variable	Variable
Is early sale allowed	Yes, and the customer entitles to the gains from the difference between purchase and sale price	Yes, and the customer entitles to the gains from the difference between purchase and sale price	Yes and the customer entitles to the gains from the difference between the principal and sale price	Yes and the customer entitles to the gains from the difference between principal and sale price according to the portion of share owned.
Is home improvement allowed	Yes	Yes	Yes	Yes
Is early payment allowed	No	No	Yes	Yes
Is securitization suitable	No	No	Yes	Yes
Are taxes and insurance included	Not included in the purchase price	Normally insurance/takaful included in the purchase price	Typically included in the cost of lease	Typically included in the cost of lease
Bank Risk (based on the length of ownership by the bank)	Low risk	Low risk	High risk	High risk

Source: Researcher compilation

Comparison between Islamic home financing and conventional home financing

Table 2.2 depicts the differences between Islamic instrument and conventional instrument of home financing. *Murabahah* mode of home financing is selected to represent the comparison because it remains the most dominant mode of Islamic home financing practised throughout the countries.

Table 2.2: Differences between *Murabahah* House Financing and Conventional Housing Loan

	<i>Murabahah</i>	Conventional Home Loan
Relationship between the parties	Customer vs. Bank (Financier)	Borrower vs. Bank (Lender)
Mode of contract	Sale contract i.e. commodity and money exchanged	Loan contract i.e. money with money exchanged
Mode of payment	Fixed	Variable based on interest rate
Eligibility	Applicable to those with credit references and stable sources of income to unable of settling the facility before the retirement age	Applicable to those with credit references, stable sources of income to guarantee the payment of the loan before the age of 65
Asset Qualification	Certain minimum value of asset required	No minimum value of property required
Rebate	Based on the discretion of bank as the financier if there is early settlement, (but normally the banks will grant it)	Right of borrower if there is early settlement
Property own by	Customer	Borrower
Type of property used	Completed	Completed and property under construction

Margin of financing	Up to 80% of the property value	Up to 125% of the property value
Liability bear by	Customer	Borrower
Insurance	There is no compulsory for life and building insurance	Life and building insurance are compulsory in most cases
Risk	Low risk since the lender never owns the property	High risk since the bank put itself in the position of owner of the property
Income multiplier	Up to 5 times primary annual income	Up to 2.5 times primary annual income

Source: compiled from Dar (2001) Review of Islamic Economics (No.12 and 14)

2.4 ISSUES IN ISLAMIC HOUSING FINANCE

There are several issues which are related to the application of Islamic housing finance. The most important are the following:

2.4.1 Mimicking the Conventional Products

Some of the Islamic products of home financing are said to become similar or duplicate the conventional institutions. There are many critics on the concept of Islamic products, which does not portray any difference between the conventional products, or even when the difference exists, it is considered artificial in nature and not substantive in any ways (Khan, 2010).

As a consequence, without proper knowledge, a majority of the customers of Islamic banks believe that the Islamic products are akin to the conventional ones and therefore, the separation between the Islamic and non-Islamic products would be unrealistic.

2.4.2 Late Repayment

Late repayment of the loan or financing is a common risk issue either for the Islamic or conventional banks (Salama, 1991). In conventional banking, when late or non-repayment occurs, it will accumulate the balance once it remains stagnant. Therefore, the interest rate will sometime deter the borrowers from a late payment. In contrast to the Islamic banking products, since the contracting parties have agreed to the stipulated selling price of the house, the bank cannot impose any penalty if the customer default his monthly payment. This situation sometimes becomes an incentive for some customers to pay late. As a consequence, Islamic banks offering *murabahah* would already have included the default risk margin, that result in the product becoming more expensive compared to the conventional one (Ebrahim, 2005). Unlike the *diminishing musharakah*, the customer who does not pay the rent will make the balance of the principal remains unreduced and therefore the late payment may become deterrent for some of them.

2.4.3 Inflationary Condition

Based on *murabahah* and BBA contract, which is based on the contract of sale and purchase, the selling price is already fixed in advance and parties have agreed upon it. Therefore, if there is an inflation taking place, the customers and the banks have no rights to either

increase or decrease the monthly payment. However, for the *musharakah* contract, it will stand better during the inflationary condition because the *musharakah* helps the financial institutions to secure a share on the value of the asset when its value appreciates with inflation (Salama, 1991).

2.4.4 Rebate

In the conventional banking system, rebate is considered an incentive for the borrowers to pay the loan earlier from the maturity period. Normally, when the borrower is able to pay off the loan earlier, the banks will offer certain discounts for the borrower. In other words, the total amount of the loan due will be less if the borrower is capable of paying the total loan amount earlier than the stipulated period.

In sale contracts, the total amount of financing facility which is considered to be the selling price is already fixed when the contract is made between the contracting parties. Therefore, the borrowers are bound to pay the selling price which is agreed earlier until the maturity period. According to *Shari'ah*, rebate depends at the sole discretion of the banks which offer the facility to customers.

2.4.5 Capital Adequacy Standards

Capital adequacy standards are designed in order to promote robustness and soundness of the global financial system. The introduction of this standard is aimed to improve the way regulatory capital requirements reflect underlying risks (BASEL, 1999). Therefore, in this case, when applying the capital adequacy standards to the Islamic financial institutions and the Islamic products, the bank regulators should take into consideration the capital treatment for the Islamic mortgages. The considerations will among others include the issues on whether the risk weighting for the Islamic mortgages are similar to the conventional mortgages, and whether the *Shari'ah* compliant products are capable of amplifying or mitigating risk available in the market (Thomas and Baxter, 2005).

Therefore, it is an imperative for the financiers to ensure that each of the Islamic products are provided with an adequate risk weighting similar to conventional mortgages in terms of risk. At the present, conventional mortgages have a risk weighting of 50% which is similar to *murabahah* housing finance product. However, the risk weighting for *ijarah* products is 100% and, thus make the products become more expensive. This is because if the product

involves the higher risk weighting, the financiers will normally increase the pricing of the products and vice versa (West, 2005).

2.4.6 Stamp Duty

The issue on stamp duty can be considered as a settled issue in most of the countries having a dual banking system. For example, in UK and Malaysia, previously the customers are subject to a double charge for the payment of stamp duty because of the sale and buy back of the asset involved. In other words, when the asset is transferred from the customers to the bank in the Property Purchase Agreement, the customers have to pay the stamp duty of the asset. Then, if the asset is transferred back to the customers from the banks based on Property Sale Agreement, they are subjected again to the payment of stamp duty. However, via the amendment of the relevant laws and statutes, this payment of stamp duty is only subjected to a single charge since the transaction involves the same asset.

2.4.7 Conflict of the Court's Jurisdiction

The issue on the conflict of court's jurisdiction normally occurs in a dual banking system, in which the application of Islamic banking system is done alongside with its conventional counterpart. For example, in Malaysia, the jurisdiction of Islamic matters is placed under the state jurisdiction. However, for the Islamic banking system, the jurisdiction for this matter is placed under the federal jurisdiction because it is considered to be a part of finance and monetary matter which is the exclusive jurisdiction of the federal government. Therefore, having the Islamic banking cases in the civil courts always result in the confusion and unfair treatment to the parties involved since the judges or the lawyers are not professionally trained with a background in Islamic law of jurisprudence. However, in Malaysia, the Central Bank Act 2010 has been amended to recognise the power of the *Shari'ah* Advisory Council in giving the opinion to matters related to Islamic banking and finance. In other words, the opinion of the *Shari'ah* Advisory Council on Islamic banking and finance matters is considered binding to its case presided by the judge before the civil court.

2.4.8 Shari'ah Board

The role of a *Shari'ah* scholar is crucial in developing the products of Islamic banking. They act as the advisors to the financial institutions when introducing or offering new Islamic banking products. In this situation, *Shari'ah* scholars will scrutinise and approve the product which is in accordance with *Shari'ah* law. In other words, their responsibility is imperative in

ensuring that all products and services offered by the institution are fully compliant with the principles of *Shari'ah* law (Siddiqi, 2006).

Since the products are designed based on the legal opinions of the individual scholar, the opinion may vary from one to another *Shari'ah* scholars. As a consequence, there is no consensus from all the *Shari'ah* scholars for all Islamic banking products. For example, *Shari'ah* scholars in Malaysia may approve the application of *bay' bithaman ajil* as one of the products, whilst experts in Middle-east countries may heavily oppose it. The main reason for disagreement or divergence of the opinion is premised on the different interpretations of Islamic principles by four different dominant school of laws or Islamic jurisprudence; *Shafi'i*, *Hanafi*, *Maliki* and *Hanbali*.

Besides the product, the shortage of well-qualified *Shari'ah* scholars is also an issue in the Islamic banking and financial system. As a consequence, the same *Shari'ah* scholars would act as *Shari'ah* advisors in more than one financial institution. This situation inevitably gives rise to the issue of authenticity of the products, because once the scholar has approved the products, the other institutions with the same *Shari'ah* Scholar will also follow the suit in offering an identical or similar products (Ebrahim, 2005).

2.5 ALTERNATIVE HOME FINANCING: A COOPERATIVE HOME MORTGAGE

Apart from conventional housing loan and Islamic housing finance discussed in the preceding section, cooperative home mortgage is another option developed in different part of the world.

Cooperative mode of home financing or cooperative home mortgage operates when a certain group of people get together to raise funds among themselves for a specific purpose namely for the purchase or even for the construction of the house. The funds serve as a specialized mutual savings for members of the cooperative. In this situation, Ebrahim (2009: 869) explains that “unlike formal mortgage, the member whom the house is being purchased shall pay the principal along with an additional amount to the cooperative. Such amount is paid in lieu of an interest payment in formal mortgage. This simultaneous action will, therefore,

enable the member to offset the cost of borrowing with the benefit of lending, thus resulting to a facility with zero interest payment”.

This mode of home financing is deemed to be appropriate to the poor people who are unable to obtain access to formal mortgage finance. This denial of access is normally based on two factors. Firstly, due to instability of income to secure repayment, and secondly lack of affordability to legal buildings as most of the dwellings in low-income settlements do not comply with building regulations besides not having formal land titles (Ferguson, 2003).

The example of cooperative home financing can be seen in Oman through the traditional practice of financing by some tribes. In order to help each other during difficult economic situations, the clans introduce and operate the establishment of welfare fund managed by the head of the clan. Rich families or individuals from the clan are required to make a certain amount of monthly contribution to the welfare fund. Therefore, the head of the clan has an adequate annual budget to spend for the welfare of the members of the clan which includes funerals, wedding, study grants and interest free home loan or better known as *qardul hasan* (Ebrahim, 2009: 866). In fact, granting the interest free loans provide several advantages to the member and the clans as a whole. This is because, besides promoting unity, because members who receive the loan would feel grateful and become a loyal member, it also serves as an investment for the poor member to own a house that could improve their economic status and contribute to the upliftment of the other members.

Besides, another example of an Islamic cooperative home mortgage can be seen through the formal practice of Ansar Finance Group (AFG) which is based in Manchester, UK. This organisation is established in 1994 with the primary aim at providing its members an interest free finance and alternative methods of investments and financial services which are free from any form of usury (Ansar Finance Group, n.d.).

It is interesting to note that Ansar House Loan (AHL) is based on the *Shari'ah* concept of diminishing *musharakah*. It operates when a member of AFG is required to invest a certain amount of money which is considered buying shares in the organisation for a certain period. Afterwards, the interested member who wishes to purchase the home or refinance his/her existing one will later notify the organisation of his/her intention. AHL will then pay for the house price on the cash basis and registered its name as a legal owner of the house. Later, the

investment of the member in the institution will be transferred to the house to enable the member to become the co-owner and partner to the said property (Ansar Finance Group, n.d.).

The institution will then lease the house to the member at an agreed rent. The said member will later pay the rent to the institution and live in the house in proportion to share ownership of the house. The institution's share of the rent goes to AHL and the member gets back his own share. In addition, based on the agreement between the partners, the member may also purchase extra ownership shares in the house at future dates, and eventually he will be entitled to own the house and becomes the sole registered owner to the house (Ansar Finance Group, n.d.).

Typically, the price of ownership shares is calculated based on the reference to the market value of the house. Besides sharing some expenses of a capital nature between the parties based on pre-agreed ratio, the parties will also share any gain or loss (if any) for any fluctuation in the value of the property according to the proportion of shares owned, thus make this model fair to both parties. In addition, besides enjoying immediate savings in the rental payment in proportion to his/her increasing investment in the house, the member also enjoy some flexibility because he/she has a choice of unspecified time to increase share ownership. However, the member will be solely liable for any cost of repair and maintaining the property (Ansar Finance Group, n.d.).

Apart from the Islamic model of cooperative home mortgage, there is also the model of a cooperative which is based on the conventional method practiced in the UK and USA and is becoming more popular. The application of conventional cooperative home mortgage is not through direct lending and borrowing process from the co-op to its member for the purchase of their desired house. Like the Islamic model of cooperative home mortgage, conventional housing cooperatives operate when certain buyers with common interest will form and join each other on a democratic basis to own or control and manage the housing and/or related community facilities in which they live. Therefore, in order to do this, they normally form a non-profit cooperative corporation (CCH, n.d.).

Every cooperative member will pay a certain amount of money that covers their share of the operating expenses of their cooperative corporation which normally includes underlying

mortgage payments, property taxes, management, maintenance, insurance, utilities, and contributions to reserve funds. Furthermore, the ownership of the share entitles each shareholder to occupy a specific unit and has a vote in the corporation. They also enjoy certain benefits which includes of personal income tax deductions, lower turnover rates, lower real estate tax assessments, reduced maintenance costs, resident participation and control, and being able to prevent absentee and investor ownership (NAHC, n.d).

However, it should be noted that the main distinction between housing cooperative and other types of homeownership is that the member of the housing cooperative does not directly own real estate or the house. This is because members buy shares or a membership in that cooperative corporation and the real estate/house is owned by the cooperative corporation. Therefore, besides enjoying the voting right, being a shareholder, is guaranteed a member an exclusive right to live in a specific unit which is based on occupancy agreement and subject to certain rules and regulations laid down by the corporation (NAHC, n.d).

It should also be mentioned that housing cooperatives also come in many types with various sizes which include townhouses, garden apartments, mid-and high rise apartments, single-family homes, student housing and senior housing. The demand for housing cooperatives are very high in the USA in which more than 1.2 million families with a various level of income live in the homes owned and operated via cooperative associations. The number is higher compared to the UK, where there is currently a small housing cooperatives sector, numbering about 600 housing cooperatives in England, Scotland and Wales (CCH, n.d). The demands for this concept of homeownership are due to various reasons namely social and economic reasons. The former reasons include the opportunity to live in the nice place/home with a supportive and vibrant community environment. Furthermore, they also have control over their homes and neighbourhood. The later reason is the financial aspect mainly because of the affordable rent with good housing services (CCH, n.d). In short, the concept of housing cooperatives is an effective and egalitarian way of providing housing to various people apart from empowering communities.

2.6 SOCIAL HOUSING AND FINANCING

The term social housing is normally understood to refer to the house which is subsidized by the government. In the United Kingdom, the term also refers to council housing in which the

houses are provided and managed by the local authorities for a certain group of people who are unable to have access to decent homes due to factors such as low income and people with special needs (Harriott and Matthews, 1998: 3). Prior to the advent of social housing, households with low incomes live in a very cramped and overcrowded conditions which cause various issues including public health and environmental problems. Therefore, the involvement of the public sector in the provision of the house is primarily intended to ensure that every household is capable to own a decent house.

Besides local authorities, housing associations are also responsible to provide the social housing without the intention to make a profit. These housing associations are non-profit organisations and have no statutory obligation like the local authorities. In addition to providing homes, local authorities also provide various types of financial subsidy to individual households including those in social housing. For example, most of the households with low incomes may obtain a housing benefit which comprises of the payment of some or all property's rental costs (Harriott and Matthews, 1998: 4).

Traditionally, in term of its financing, social housings are seen as aspects of national policies which therefore normally consist of government grant and subsidy (Hills, 2007). This financial assistance operates in two ways. Firstly, the government provides subsidy towards the building of the house either to create new houses or increase the stock of housing. This situation will include the paying of subsidy and grant to housing associations or the private developers for the building of housing. This practice is also called as an object subsidy. In addition, the government also provides a subject or personal subsidy for the individual households towards the cost of purchasing housing services. This includes various help for example, "paying a financial subsidy to tenants with low incomes in the form of housing benefits; subsidising all owner occupiers by reducing their liability to pay taxes particularly mortgage interest tax relief and the exemption from capital gains tax liability; and reducing the cost of local taxes on housing and the council tax for low income households" (Harriott and Matthews, 1998: 58).

However, the recent trend shows that there are several changes in the ways the government assist provision. This is due to wider pressure on the part of the government to control their expenditures, but at the same, targeting to maintain their national policies in assisting lower income households to have access to adequate accommodation. The practice of object

subsidies becomes, therefore, less important compared to subject subsidies which aims to assist lower income group rather than directly encouraging the supply side.

In addition to that, a new social housing provision has also shifted from local authorities or council housing to other social providers such as housing associations which indirectly encouraged private funding. As a consequence of this practice there is a growing emphasis on transferring existing stocks to housing associations or local housing companies through privately funded buy-outs which also known as voluntary transfer. The process is supported by “a financial model that uses 100 per cent private funds to transfer the stock and then additionally supplementary funding to provide catch-up repairs and improvements. The valuation of the stock is based on the tenanted value of the stock, and eventually, the loan will be repaid by the monthly rental within the period of 25 to 30 years. Furthermore, the process is inevitably supported by the housing allowances given by the government to low income tenants” (Gibb, 2002: 333).

2.7 CONCLUSION

This chapter provides an in-depth discussion on both methods of conventional and Islamic home financing available in the market. The introduction begins with the discussion on the primary need of home for shelter. The reference to Maslow hierarchy of need is essential to show that home is one of a human’s basic needs. The discussion on the method of conventional mortgage available in the developed market for instances UK and USA is also presented. In addition, key relevant issue in the conventional mortgage is also discussed.

The discussion further explains the basic principles of Islamic finance, *i.e.* the prohibition of *riba* and *gharar*, particularly on the issue of sale of thing which is not in existence. Then, various instruments of Islamic mortgage include *bay bithaman ajil*, *murabahah*, *ijarah* and *diminishing musyarakah/musharakah mutanaqisah* have been discussed and their advantages and disadvantages are also highlighted. In addition, several issues related to the implementation of the methods of Islamic mortgages are also discussed. In order to give further understanding on the mortgages, there are two tables that explain the differences between various type of Islamic mortgage and another table also explains the differences between conventional and Islamic mortgage. *Murabahah* is also chosen to represent the differences since it is the most dominant mode of Islamic mortgage throughout the world.

Besides that, other alternatives of home financing namely cooperative financing is also discussed. In this section, several case studies are chosen to explain the implementation of cooperative home financing either Islamic or the conventional one. Then, there is also section on the social housing whose discussion emphasised on funding approach.

To sum, it can be said that there are various methods of mortgages either Islamic or conventional available to customers. Each method has its own advantages and disadvantages. Although most of the methods seem to favour the privileged buyer, but there are opportunities for the underprivileged to own the house, particularly via cooperative and social housing. It also shows that government intervention through its national policies also plays an important role in encouraging home ownership among underprivileged buyers. Chapter 3 discusses the Malaysian housing policy and finance, while Chapter 4 details housing provision in Malaysia.

CHAPTER 3

MALAYSIAN HOUSING MARKET

3.1 INTRODUCTION

Malaysia is one of the fast developing countries in South East Asia experiences high growth rates in recent years and further expecting a growth rate of 5-6% in 2011. In addition to the manufacturing base of the country, the growth in fact, has been driven by various services sector for instance, wholesale and retail trade, accommodation, restaurant, finance and insurance sub-sectors. Meanwhile, the growth in the construction industry has been supported by civil engineering works being implemented by the government under the Ninth Malaysia Plan (Economic Report, 2008/2009:37).

Being a developmentalist state, in the progress of developing the country, social concerns become the primary goal of the government which among others include housing, education, health, poverty and crime. In responding to this, several social policies with defined objectives and strategies have been enacted to meet the needs and welfare of the society as a whole. The endeavour of the government can be seen via its Ninth Malaysian Plan which clearly provides under thrust four of the National Mission 'to improve the standard and sustainability of quality of life'.

Since this research is on the housing market, this chapters aims to present the housing policy in Malaysia. As part of government strategy, it is worth mentioning that the government through its annual budget announcement for the year 2009 has allocated RM50 million for the purpose of providing 1,400 new houses and repair 1,000 houses under the Housing Assistance Programme. Priority will also be given to senior citizens, the disabled and single parents with many dependents as well as victims of natural disasters.

In this chapter, the housing policy in Malaysia is discussed to render a general idea as to how the social concerns related to housing issues have been tackled by the government. The chapter then presents the developments and trends in the housing market and finance in

Malaysia where the providers and various products available for house financing are thoroughly discussed.

3.2 MALAYSIAN HOUSING POLICY

Since independence in 1957, like other countries in the world, the government of Malaysia locates a great concern on social issues particularly in the eradication of poverty which include the issue of human settlement of the better quality of life. Housing provision in fact, is a crucial matter to ensure social-economic stability and promoting national development. In line with this, the housing policy of Malaysia aims to provide adequate, affordable and quality houses to Malaysians with special attention gives to low income groups. Therefore, the government of Malaysia through its 5 years National plan introduces the housing scheme comprises various categories of low, medium and high cost houses. The scheme is hoped to benefit Malaysian society both in the rural and urban areas.

Under the initial stage after independence, the government is solely the key player in providing the low cost housing in Malaysia. However, because of lacking of capital and manpower, in 1970s the private sectors were invited to join the government in achieving the targets for housing and providing adequate supply. The collaboration targeted the low cost housings which were provided in every five year National plan (Ghani and Lee, 1997). The role of private sector in housing industries has further strengthened during Fourth Malaysia Plan. During this time, the government sought the co-operation of private developers to mandatorily build at least 30% low cost houses in housing projects. Initially in the 1970s, the government had given private developers the responsibility of supplying housing for the middle and higher-income groups. However, recently they have continuously been reminded of their social responsibility towards helping the government achieve its home-owning democracy objective.

In realising the target, the private sector expected to produce 570,000 units out of the total target of 800,000 and 303,000 units out of the total target of 615,000 under Seventh (1996-2000) and Eighth Malaysia Plan (2001-2005) respectively. Hence, apart from the quotas for the low cost housing, the private sector actively involves in the construction of the medium cost and high cost housing. Recently, in line with the spirit of Ninth Malaysia Plan (2006-2010) with the total target of 709,400 units of houses, continuous efforts are undertaken to

ensure that Malaysians of all income levels will have access to adequate, quality and affordable homes, particularly the low-income group. In this regard, the private sector is encouraged to build more low and low-medium-cost houses in their mixed-development projects. On the other hand, the public sector concentrates on building low-cost houses and houses for public sector employees, the disadvantaged and poor in urban and rural areas.

The government also continuously reviews the existing policies, regulations and strategies to further improve the registration and distribution system for low-cost houses. This is to ensure proper distribution and prevent genuine target groups from being denied the opportunity to purchase these houses. These efforts include regularly updating the information in the databases, revising and standardising criteria selection of the eligible purchaser for all states in Malaysia. Subject to the income level, the main priority was given to less advantaged groups such as single mothers, families with many dependents and those with handicapped members.

As a general rule, all Malaysians are eligible to purchase the house. However, there is an exception to low cost houses and houses built on Malay reserved land where they are only available to a certain group of people. As for the latter, they are only for Malays while the former are aimed at a target group of households with monthly incomes not exceeding RM750. However, these limits are revised in 2002 where the low-cost housing is defined according to its selling price of RM25 000 (about US\$ 8000) per unit or less. The government has also introduced the open registration system to ensure these said houses are secured by the targeted group.

3.3 MALAYSIAN HOUSING FINANCE

The role of financiers is inevitably pivotal in assisting the house buyers to purchase the houses. This is because not all people are capable of buying the houses on a cash basis. Therefore, the financiers provide various different packages of housing loans either conventional or Islamic to suit the different needs of individuals.

Figure 3.1 depicts that the key providers of housing loan in Malaysia are the commercial banks, finance companies, government and building societies. These providers have different

objectives and target groups, with a different lending rate for housing loans. Apart from that, there are certain conglomerate companies which provide housing loan for their staff.

Figure 3.2 and 3.3 depict the outstanding loans and approved loans, which were reported in 2009 and 2010 respectively, for these key providers of housing loans. The data clearly shows that commercial banks rank as the main provider for the housing loan, which in 2009 constitutes 85% from the total approved loan in Malaysia, and followed by the government with 11.1% from the total approved loan.

Figure 3.1: Housing Credit Institutions

Housing Credit Institutions						
	Year of establishment	Objective	Lending rate for new housing loans (%)		No. of branches	
			2009	2010	2009	2010
Commercial banks	-	-	3.6 ^{1,2}	4.0 ^{1,2}	4,086 ³	4,018 ³
Treasury Housing Loans Division	1970	To provide housing loans to Government employees.	4.0 ¹	4.0 ¹	2	2
Bank Kerjasama Rakyat Malaysia Berhad	1954	A co-operative society which collects deposits and provides banking facilities according to <i>Shari'ah</i> principles.	6.5 ¹	6.9 ¹	112	127
Malaysia Building Society Berhad	1950	To be a consumer driven financial institution offering property lending and deposit taking activities leading to wealth management creation for its valued customers	6.37~ 6.41	7.04~7.08	32	33
Borneo Housing Mortgage Finance Berhad	1958	To provide housing loans mainly to Sabah and Sarawak State Government employees	6.75~8.25	6.75~8.25	1	1
Bank Simpanan Nasional	1974	To promote and mobilise savings particularly from small savers and to inculcate the habit of thrift and savings	3.8 ¹	5.9 ¹	375	384
Sabah Credit Corporation	1955	To uplift the social economic development of Malaysians in Sabah through the provision of easy access to financial credit	3.0 ~ 7.5	3.0 ~ 7.5	11	11

1 12-month average lending rate

2 Excludes Islamic banks

3 Includes Islamic banks

Source: Annual Report of Central Bank of Malaysia 2010

Figure 3.2: Approved Housing Loan

Approved Housing Loan						
	2009	2010p	2009	2010p	2009	2010p
	RM million		Annual change (%)		% share	
Commercial banks ¹	60,707	80,327	4.8	32.3	85.0	87.7
Treasury Housing Loans Division	5,920	6,254	-21.9	5.7	11.1	8.5
Bank Kerjasama Rakyat Malaysia Berhad	115	59	-61.4	-48.5	0.4	0.2
Malaysia Building Society Berhad	1,650	396	5.4	-76.0	2.3	2.4
Borneo Housing Mortgage Finance Berhad	60	37	-11.7	-37.3	0.1	0.1
Bank Simpanan Nasional	798	900	11.7	12.8	1.0	1.2
Sabah Credit Corporation	4	3	-67.2	-37.0
Total	69,253	87,977	1.6	27.0	100.0	100.0

¹ Includes Islamic banks*p* Preliminary

... Negligible

Source: Annual Report of Central Bank of Malaysia 2010

Figure 3.3: Outstanding Housing Loan

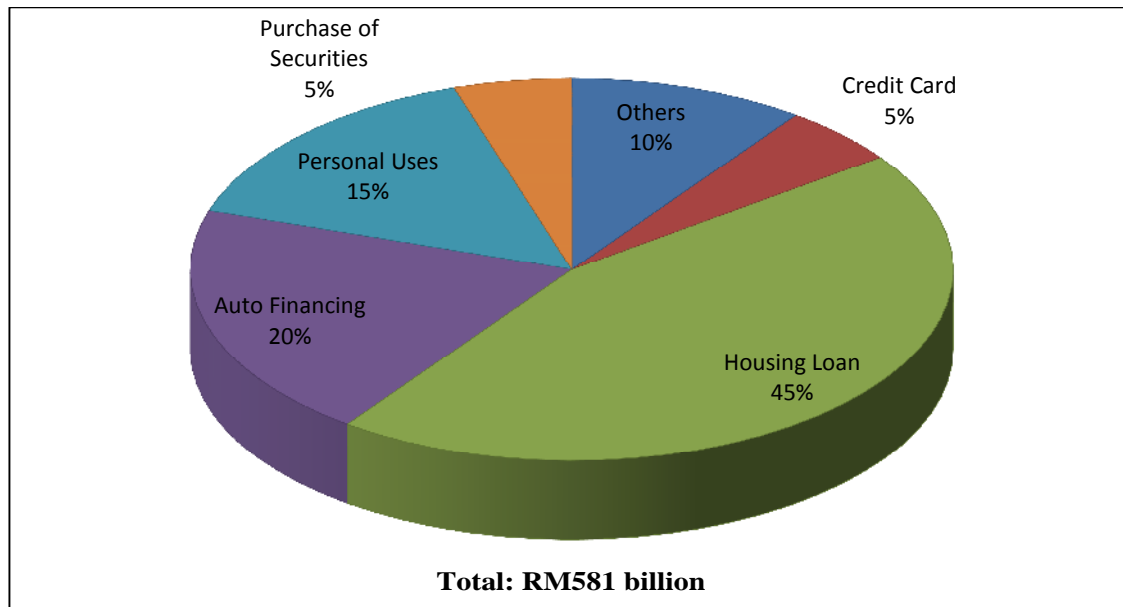
Outstanding Housing Loan						
	2009	2010 ^p	2009	2010 ^p	2009	2010 ^p
	RM million		Annual change (%)		% share	
Commercial banks ¹	210,017	226,930	9.3	8.1	84.0	85.0
Treasury Housing Loans Division	26,716	27,042	-2.5	1.2	10.7	10.1
Bank Kerjasama Rakyat Malaysia Berhad	4,189	3,837	-5.2	-8.4	1.7	1.4
Malaysia Building Society Berhad	5,274	5,331	2.6	1.1	2.1	2.0
Borneo Housing Mortgage Finance Berhad	717	682	-3.4	-4.8	0.3	0.3
Bank Simpanan Nasional	3,034	3,128	2.7	3.1	1.2	1.2
Sabah Credit Corporation	163	141	-9.0	-13.1	0.1	0.1
Total	250,111	267,091	7.4	6.8	100.0	100.0

¹ Includes Islamic banks

^p Preliminary

... Negligible

Source: Annual Report of Central Bank of Malaysia 2010

Figure 3.4: Composition of Household debt 2010

Source: Central Bank of Malaysia (2010)

Figure 3.4 depicts the composition of household debt in 2010 where the highest percent of household debt goes to housing loan with 45%, followed by auto financing (20%). Personal use constitutes 15% of household debt and others 10%. Lastly, household debt for purchase of securities and credit cards share the same percentage of 5% of the total composition of household debt in 2010.

3.3.1 Housing Finance Products and Providers in Malaysia

This section discusses the providers of housing loan in Malaysia which comprises of banking and financial institutions, government of Malaysia, companies and some building societies. The discussion also highlights types of housing loan products available in the market.

3.3.1.1 Banking and Financial Institutions

The banks and finance companies are regulated by several legislations. The most relevant statutes for the banking institutions are Banking and Financial Institution Act (BAFIA) 1989 and Islamic Banking Act 1983. The former is applicable to the conventional banks while the latter is applicable to the Islamic banks. The power of the banks and finance companies to give out the loans to the public was clearly stated under section 2 (a) (iii) of BAFIA (under the purview of banking business) and Section 2 of IBA (which is also under the purview of Islamic Banking business).

In term of product, these banks and finance companies provide various kinds of products which consist of conventional and Islamic housing loan. The Islamic banks offer Islamic compliant products while the conventional banks offer conventional products. Albeit many of the banks offer the Islamic products, their focus of product was solely based on *murabahah* and *bay' bithaman ajil* which are the debt based financing, and to small extent *musharakah mutanaqisah* and *istisna'*. *Murabahah* and *bay' bithaman ajil* are based on Islamic sale and purchase contract which the payment scheme is typically designed on deferred payment basis on a fixed rate throughout the financing tenure. *Musharakah mutanaqisah* is based on the mixture of Islamic sale and equity contract which the payment scheme is typically designed based on a floating rate throughout the financing tenure. The details of these instruments are discussed in Chapter 4 and 5.

As for the conventional home financing products, the common type of financings is based on payment scheme (Amir, 2006): fixed rate for the first few years, with floating rate for the remaining tenure; floating rate throughout the whole tenure and floating rates with reducing rate trend. This latest trend in the market is designed to encourage customer loyalty. As many customers opts to re-finance their accounts after 5 years (usually called the lock-in period), such packages offer lower rates to coax customers to stay with the bank longer.

3.3.1.2 Government of Malaysia

Government of Malaysia under Ministry of Finance provides housing loans for the public servants who meet the requirement. The Treasury Home Loans Division is responsible for the housing loans for the government employees in Peninsular Malaysia, while in Sabah and Sarawak, Borneo Housing Mortgage Finance Berhad is responsible to provide the housing loans for the government employees. Basically, the procedures and requirements of obtaining the housing loans are common between the government employees either in Peninsular Malaysia or Sabah and Sarawak. The only distinction is the profit rate charged for employees in Peninsular Malaysia is 4% per annum, while in Sabah as well as Sarawak, the profit rate is between 7.2% to 8.25% per annum. The government offers both conventional and Islamic housing finance (based on BBA contract) with the same interest/profit rate between these two.

The housing loan offered by the Government of Malaysia to the public employees can be utilised in several ways which include to purchase the land with a completed house; to build a house on an applicant's land with the condition that the ownership of the land is free from any registered interest; to purchase a land together with a house or a house lot (which is under a construction from a developer or to purchase a land with an individual title and at the same time constructing a house on it); and to settle a housing loan received from any financial institutions or any other sources which is recognised by the government (MOF, n.d).

Besides, there are certain requirements need to be fulfilled by the employees when apply for the housing loan provided by the government. The basic conditions are the applicant must be a Malaysian who works for at least one year on a permanent job basis and has been confirmed for the post; the application form must be submitted within six months before the date of retirement/ end of service; and the applicant must not have been declared as bankrupt.

Apart from these requirements, there are also different entitlements of the housing loans which depend to their basic salary per month. The range is between RM48, 000 for those whose basic pay is RM599 or less and up to RM360, 000 for those whose basic pay is RM3, 500 and above. The charge imposed on the loan is 4% per annum and the payment is by way of instalment through a deduction from salary per month (MOF, n.d).

Besides, with the effort to help under-privileged people, there is also another type of loan offered by the government of Malaysia under Ministry of Housing and Local Government to those who are in the low income group. This scheme is known as Housing Loan Scheme (MHLG, n.d). The purpose of the housing loan scheme is to allow the lower income group without other borrowing means to build or buy fully built low-cost houses to improve their standard of living. This scheme is an effort by the Government to help the lower income group to finance the cost of building a house so that they could at least have basic housing accommodation. With this facility, the Government is able to provide suitable and satisfactory housing accommodation to raise the standard of living of this group.

This loan scheme is implemented by the Ministry of Housing and Local Government and supported by the revolving fund of the Housing Loan Fund for the lower income group. It deals directly with the borrowers. The maximum loan amount is RM20, 000 with the first RM10, 000 being exempted from service charges while a 4% service charge is levied on the

subsequent RM10, 000. The target group for the scheme is households with a combined income of between RM500 and RM1, 200 that are not eligible for any other loan facility.

Besides providing housing loans to the public servants and lower income groups, government is also responsible in promoting housing finance. Since repayment for the housing loans constitutes a major financial commitment for most households, there is an incentive provided by the government through its agency, Employee Provident Fund (EPF). The EPF is a national social security organization operating through a provident fund scheme in Malaysia. The principal members consist of the private and non-pensionable public sector employees. The EPF is intended to help them to save a fraction of their salary in a lifetime banking scheme where it primarily applies to retirement, sickness, disabilities or unemployment (EPF, n.d).

EPF operates in a way that the members and their employers will contribute certain amount of money which is known as 'contribution' to EPF for each and every month. A contribution is the amount of money paid to the EPF which is calculated based on the monthly wages of an employee, and then credited into the employee's EPF account. The EPF contributions for each employee are made up of the employee's and employer's portions. Effective from 1 January 2007, a member's EPF savings consists of two accounts that vary by their share of savings and withdrawal flexibilities. The first account, dubbed as 'Account I', stores 70% of the members' monthly contribution, while the second account, dubbed as 'Account II', stores 30%. Account I restricts withdrawals to the moment the member reaches an age of 55 years old, incapacitated, leaves the country or passes away. Withdrawal of savings from Account II however, is permitted for down payments or loan settlements for a member's first house, finances for education and medical expenses, investments, and the time when the member reaches 50 years of age.

In line with the government's effort in promoting home ownership, in early 1980s, individual can withdraw from part of their account (Account 2) in EPF for partially finance the purchase of a house; or partially finance the building of a house. Then effective 2 January 2001, withdrawal from Account 2 was further allowed for the purpose of reducing or redeeming the balance of housing loans taken from the financial institutions. Furthermore, effective 1 January 2008, contributors can make monthly withdrawal from their accounts to make monthly payments on housing loans.

It should be noted that the government also introduces several incentives to encourage house ownership particularly for the low income group. In 2009, the Government provided full stamp duty exemption to all documents including the loan agreements for the purchase of low cost houses. For the purchase of medium cost houses, further 50% stamp duty exemption on the instrument transfer for the purchase of house unit valued at not more than RM250,000.00. This result in to reduce the cost of purchasing the house up to RM2,000.00. Furthermore, for the people with no fixed income, for instance the farmer or the small traders that are unable to provide proof of their income stream, the government's incentive includes the setting up of a RM50 million fund to provide guarantees to end financiers for this group of people. Such guarantees have been given to the Bank Islam Malaysia Berhad and Bank Simpanan Nasional in order for them to extend a loan to this group (Economic Report, 2008/2009:59).

3.3.1.3 Companies

In addition, there are several companies in Malaysia which offer housing loan for their employees. These companies are normally the conglomerates companies for instance, Petronas, Intel, and Shell. Besides housing loans benefit, there are other benefits provided by the companies for instance, unlimited medical benefits which also cover spouse and children, retirement benefits, annual contractual bonus, car loan and dental benefit. As regards to the products offered, these companies typically have both conventional and Islamic housing loan which the latter normally based on *bay bithaman ajil* instruments.

3.3.1.4 Malaysian Building Societies Berhad

As an alternative finance provides, the building societies are also responsible as the provider of housing loan in Malaysia. Malaysian Building Societies Berhad (MBSB) is a company incorporated under the Companies Act 1965 and a Scheduled Institution as defined under the Banking and Financial Institution Act 1989 (BAFIA). The status of an Exempt Finance Company was granted to MBSB on 1 March 1972 by the Ministry of Finance and the status has remained since then. This allows MBSB to carry on a finance business without a license. The objective of MBSB is to be a consumer driven financial institution offering property lending and deposit taking activities leading to wealth management creation for its valued customers (MBSB, n.d). Previously, in 1960s to 1970s, MBSB was a major provider for the housing loans. However, since 1980s when there were shifts in players in the financial market, the commercial banks and the finance companies become the major providers for the

housing loans in Malaysia and provide various scheme of housing financing facility either conventional or Islamic housing finance.

3.4 CONCLUSION

This chapter contains description of the housing market in Malaysia. The introductory part discusses about Malaysian housing policy and the role of government in achieving the target of housing units in every five year planning especially the low cost houses for the low income group, to be constructed by the public and private sectors.

Then, the section is followed by a discussion on the Malaysian housing finance particularly on the key providers of housing finance in Malaysia and their products. The main financiers comprise of the commercial banks offer various products and packages either based on conventional or Islamic one. Besides the commercial banks, discussion also covers the role of government of Malaysia through its Treasury Loans Division to give out the housing loans for the government employees. The discussion also includes the circumstances where the housing loans can be applied and utilised for. Besides, the role of EPF as one of the assistance provided by the government to help and encourage people for home ownership has also been discussed.

In short, the housing market and finance in Malaysia can be considered having a robust foundation. Besides continuous effort on part of the government in helping people for home ownership, various incentives were created and provided to assist the people particularly the low income group to own the house. This effort is consistent with the housing policy which is aimed to provide adequate, affordable and quality houses to all Malaysian.

CHAPTER 4

ISLAMIC HOUSING FINANCE PROVISIONS IN MALAYSIA: MARKET, PRODUCTS AND INSTITUTIONS

4.1 INTRODUCTION

Malaysia is a state, which recognises Islam as a religion of the federation. However, any other religions can be practised in peace and harmony. This provision has clearly mentioned in Article 3 of the Federal Constitution which is regarded a supreme law of the land. Islamic law, which is practised in Malaysia, is in fact, in accordance to *Shafi'i* school and *Malay* custom as modified by the Muslim law. It regulates several specific matters related to personal and family affairs such as marriage, divorce, adoption, legitimacy of child, bequest and certain religion offences, for instance, adultery and drinking liquor, among those who profess the religion of Islam.

Although the application of Islamic law is mainly limited to matters concerning personal, family and certain religious offences, the Malaysian government has attempted to give Islam a modern face, which includes the establishment of certain Islamic institutions, such as Islamic banks and the Institute of Islamic Understanding. Besides, due to the increasing needs of the society to engage in financial transaction in accordance with the Islamic principles by abstaining *riba*, Malaysia has also encouraged other Islamic business practices such as Islamic finance and Takaful (Ibrahim and Joned, 1995).

In this chapter, the history of Islamic housing provision is discussed to provide a background overview of the state of Islamic home financing in Malaysia. It is followed by a discussion on the Islamic banks as the main providers of Islamic mortgage, and BBA home financing instrument as it is a dominant product available in IBF market Malaysia. Next, a discussion about the application of BBA instrument of home financing is also presented in order to highlight the controversial issues surrounding its implementation, which ultimately warrants the need of having equity-based home financing based on MM home financing. The discussion on the market condition of Islamic mortgage which includes demand and supply

of the Islamic mortgage in Malaysia is presented next. Lastly, a progress of Islamic mortgage in Malaysia is also presented by emphasising a danger on over reliance to debt-based financing, which leads to the recommendation of having equity based financing product.

4.2 HISTORY

The detail of the provisions of Islamic housing is relevant to the evolution of Islamic finance in Malaysia. Notably, in 1960s, there was a proposal made by the Malaysian prominent economist, Royal Professor Ungku Abdul Aziz for a more structured form of gradual savings before performing pilgrimage among the Muslim. The proposal led to the establishment of Pilgrimage Fund (Lembaga Tabung Haji) in 1969, where the main objective is to mobilise the saving in accordance to *Shari'ah* permissible instruments for pilgrimage purposes. However, since the saving could not be used for financing purposes, the Malaysian government began to enable Islamic financing in the structured and formalised approach that will contribute to the economic growth (MIFC, n.d).

In response to the need, the landmark law on Islamic banking and financial system, Islamic Banking Act (IBA), was passed in 1983 which came into effect on 7 April 1983. Later, on 1st of July 1983, the first Islamic bank known as Bank Islam Malaysia Berhad (BIMB) was established with an authorised capital of RM600 million with paid up of RM 79.9 million. The financing facilities granted by BIMB include Islamic mortgage. After 10 years, due to the success of BIMB, the Central Bank of Malaysia has introduced the 'Interest Free Banking Scheme' which enables the conventional banks, through their windows, to offer Islamic banking products. As a consequence, many conventional banks have adopted the scheme and offered Islamic banking products (Chong and Liu, 2009). Presently, Islamic mortgage has broadened its appeal to, not only devoted Muslims, but also to non-Muslims, due to their competitive pricing as compared to the conventional interest-based financing. Islamic mortgage or Islamic home financing is defined as a type of financing that is secured by real property and provides a schedule of payments of profit rate and repayment of the principal to the bank (Amin *et al*, 2008: 214).

Presently, there are 16 Islamic banks registered in Malaysia which comprise of 6 foreign ownerships and 10 local ownerships and 16 other participating banks in Islamic Banking Scheme (See Table 4.1 and 4.2):

Table 4.1: List of Islamic Banks in Malaysia

	Name of Islamic banks	Ownership
1.	Affin Islamic Bank Berhad	Local
2.	Al-Rajhi Banking & Investment Corporation (Malaysia) Berhad	Foreign
3.	Alliance Islamic Bank Berhad	Local
4.	AmIslamic Bank Berhad	Local
5.	Asian Finance Bank Berhad	Foreign
6.	Bank Islam Malaysia Berhad	Local
7.	Bank Muamalat Malaysia Berhad	Local
8.	CIMB Islamic Bank Berhad	Local
9.	Hong Leong Islamic Bank Berhad	Local
10.	HSBC Amanah Malaysia Berhad	Foreign
11.	Kuwait Finance House (Malaysia) Berhad	Foreign
12.	Maybank Islamic Berhad	Local
13.	OCBC Al-Amin Bank Berhad	Foreign
14.	Public Islamic Bank Berhad	Local
15.	RHB Islamic Bank Berhad	Local
16.	Standard Chartered Saadiq Berhad	Foreign

Source: Central Bank of Malaysia (2012)

Table 4.2: Participating Banks in Islamic Banking Scheme

	Name of Banks
1.	Bank Simpanan Nasional Berhad
2.	Bank Pertanian Malaysia Berhad
3.	Export-Import Bank of Malaysia Berhad
4.	Bank Pembangunan Malaysia berhad
5.	Bank Perusahaan Kecil & Sederhana Malaysia Berhad
6.	Bank Kerjasama Rakyat Malaysia Berhad
7.	OSK Investment Bank berhad
8.	MIDF Amanah Investment Berhad
9.	KAF Investment Bank berhad
10.	CIMB Investments Bank Berhad
11.	Maybank Investments
12.	Alliance Investment Bank Berhad
13.	AmInvestment Bank Berhad
14.	Deutsche Bank (Malaysia) Berhad
15.	The Royal Bank of Scotland Berhad
16.	Citibank Berhad

Source: Central Bank of Malaysia (2012)

4.3 ISLAMIC BANKS AND ISLAMIC MORTGAGE IN MALAYSIA

Apart from the government and certain companies mentioned in Chapter 2, Islamic banking institution is also the main providers of Islamic home finance which instrument mostly based on *BBA*, *MM* and *Istisna'*. Table 4.3 depicts the list of Islamic banks, the year of incorporation and its instrument used in providing Islamic mortgage in Malaysia. The data presented is compiled from the annual reports of each Islamic bank.

Table 4.3: List of Islamic Banks, Instruments of Islamic Home Financing used and Year of Incorporation

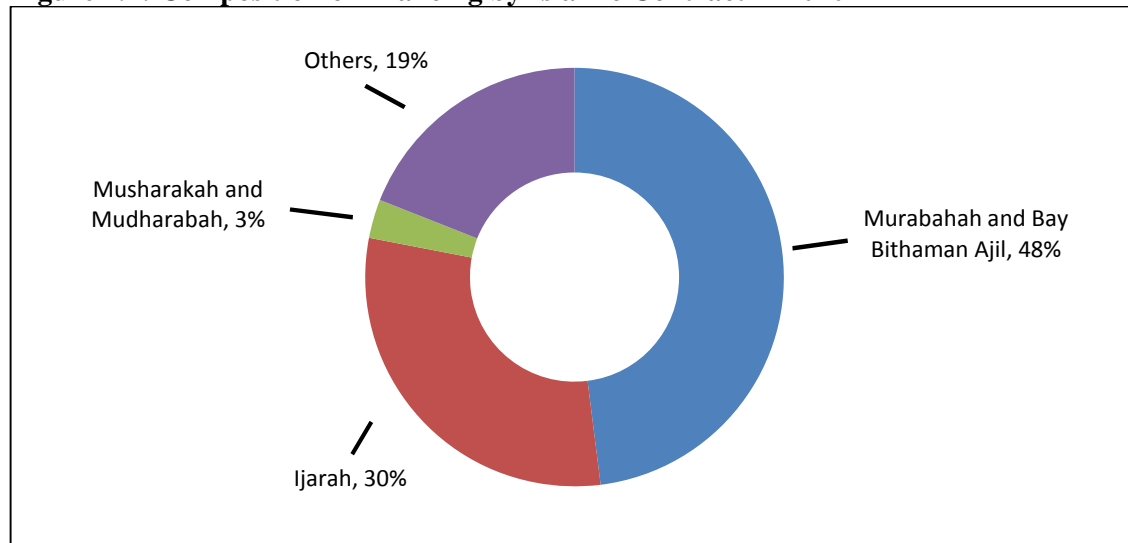
	Name of Islamic banks	Mortgage Concept	Year of Incorporation
1.	Bank Islam Malaysia Berhad	BBA / Istisna'	July 1983
2.	Bank Muamalat Malaysia Berhad	BBA	Oct 1999
3.	CIMB Islamic Bank Berhad	BBA	Nov 2004
4.	RHB Islamic Bank Berhad	Diminishing Musharakah	Mar 2005
5.	Hong Leong Islamic Bank Berhad	BBA	Mar 2005
6.	Kuwait Finance House (Malaysia) Berhad	Diminishing Musharakah/ Istisna'	Aug 2005
7.	Affin Islamic Bank Berhad	BBA	Sept 2005
8.	Asian Finance Bank Berhad	BBA	Nov 2005
9.	AmIslamic Bank Berhad	BBA	May 2006
10.	Al-Rajhi Banking & Investment Corporation (Malaysia) Berhad	BBA	Oct 2006
11.	Maybank Islamic Berhad	BBA/Diminishing Musharakah	Jan 2008
12.	HSBC Amanah Malaysia Berhad	BBA/Diminishing Musharakah	Feb 2008
13.	Alliance Islamic Bank Berhad	BBA	Apr 2008
14.	Public Islamic Bank Berhad	BBA	Nov 2008
15.	Standard Chartered Saadiq Berhad	BBA	Nov 2008
16.	OCBC Al-Amin Bank Berhad	Diminishing Musharakah	Dec 2008

Source: Researcher's compilation

Table 4.3 depicts that the most prominent concept used by the Islamic banks in providing Islamic mortgage is based on the BBA. 13 out of 16 Islamic banks preferred the BBA

concept to provide the facilities for Islamic mortgage. Moreover, the Central Bank of Malaysia claims that BBA remains the most popular concept of Islamic financing offered by Islamic Banks compared to other modes of financing. As can be seen in Figure 4.1, in 2010, *murabahah* and BBA recorded the highest percentage of 48% for the composition of financing by Islamic contract, while *musharakah* and *mudharabah* remain marginal with only 3%.

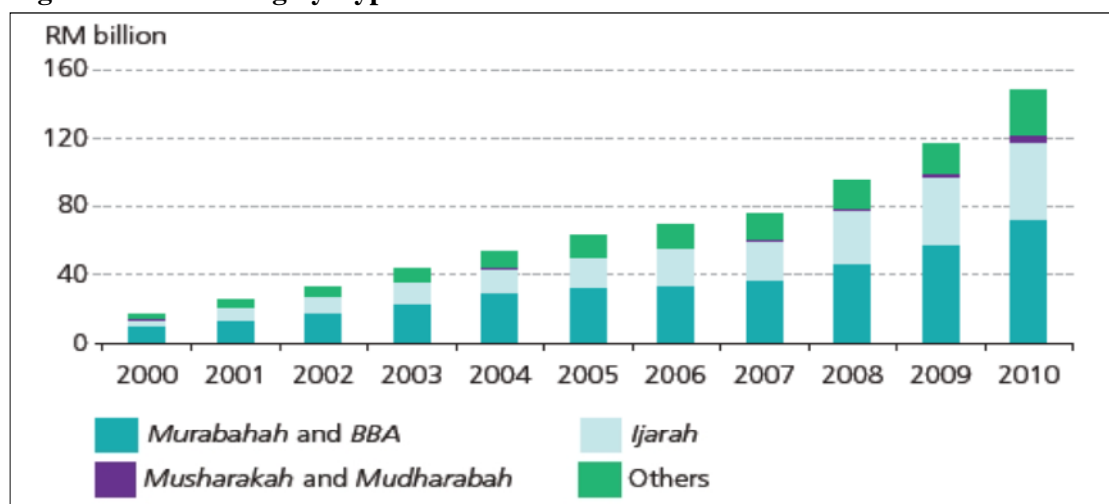
Figure 4.1: Composition of financing by Islamic Contract in 2010



Source: Central bank of Malaysia (2010)

Figure 4.2 further highlights the trend of financing for *murabahah* and BBA is increased from 2000 until 2010. On the other hand, for *musharakah* and *mudharabah*, although there were only small amount, there were still increased particularly from 2007 until 2010.

Figure 4.2: Financing by Type of Islamic Contract



Source: Central bank of Malaysia (2010)

Table 4.4 further shows the increasing trend of financing based on the BBA concept. Although BBA is dotted by many *Shari'ah* and legal issues, there is a gradual increase of financing based on BBA concept from the end of November 2008 until the end of November 2009.

Table 4.4: Trend of BBA Financing of Islamic Banks and Islamic Banking Scheme of Commercial/ Investment/ Merchant Banks from Nov 2008 until Nov 2009

Period	Financing by Bay Bithaman Ajil concept		Total
	Islamic Banks	IBS of Commercial/Investment/ Merchant Banks	
Nov 2008	33,471.9	1,029.6	34,501.6
Dec 2008	34,308.1	225.7	34,533.8
Jan 2009	35,278.3	223.1	35,501.4
Feb 2009	35,333.7	220.9	35,554.6
Mar 2009	35,528.5	209.6	35,738.1
Apr 2009	36,200.4	205.8	36,406.2
May 2009	36,644.6	202.6	36,847.2
Jun 2009	36,667.0	199.4	36,866.5
Jul 2009	38,547.4	193.3	38,740.7
Aug 2009	39,192.0	189.8	39,381.7
Sep 2009	39,184.0	187.6	39,371.6
Oct 2009	39,982.4	183.7	40,166.1
Nov 2009	41,337.9	182.1	41,520.0

Source: Central Bank of Malaysia (2009)

Although Islamic modes based on equity financing is considered closer to the spirit of *Shari'ah*, for instance, *mudarabah* and *musharakah*, but in reality it does not exist, because the application of equity based finance remains marginal. Anwar (2003: 65) raises his concern that the situation has deteriorated whenever the methods used in measuring the performance of Islamic banks is the similar methods used to measure the conventional banks. Therefore, it is impliedly suggests that Islamic banks are competitors to conventional banks with both of them share the same business such as taking deposits and extending credits. Hence, Islamic banks are perceived to retain their identity as traditional lenders, similar to the conventional banks, rather than entrepreneurs.

4.4 INSTRUMENTS AND RELATED ISSUES

As discussed in Chapter 2, there are various *Shari'ah* compliant products for the Islamic mortgage that have been developed, include *bay' bithaman ajil*, *murabaha*, *diminishing musharakah*, *ijarah* and *istisna'*. This section highlights the important issues related to the implementation of BBA home financing.

4.4.1 Permissibility of BBA

Bay' Bithaman Ajil (BBA) means a deferred payment sale which refers to the sale of goods at a certain price that includes a profit margin agreed upon by both buyer and seller. The said price shall be paid to the seller is on a deferred payment basis. According to this concept, the selling price is fixed in the agreement between the buyer and the seller, and this rate will not change and is called a profit (Billah, 2008: 22).

In Malaysia, BBA method is widely used to finance the house. BBA is normally preceded by *bay' al-inah*, which means a contract of sale and purchase of an asset whereby the seller (bank) sell to the buyer (customer) the asset at a deferred price, and subsequently, buys back at the lower price. In other words, in the existing mode of Islamic home financing, there are two distinctive modes: BBA and *bay' al-inah*. BBA is the only the mode of payment which is on a deferred payment basis, while *bay' al-inah* is the contract used for the selling and buying back of the property/ house between the bank and the customer (Hasan, 2008).

The transaction will normally occur whenever the customer pays 10% down payment of the house to the developer upon signing a sale and purchase agreement. Then the customer will approach the bank to secure mortgage for the remaining 90% of the total price. The bank first determines the requirements of the customer, in relation to the period, and manner of payment. Then, upon signing the property purchase agreement (PPA), the bank purchases the house and subsequently sells it to the customer in accordance to Property Sale Agreement (PSA) at an agreed price. The price comprises of the actual cost of the house plus the bank's margin of profit. Then, the customer will settle the loan facility through installments within a specified period and in the manner as agreed (Yasin 1997:1).

Bakar (2000) challenges that such a practice of selling and buying back the property does not reflect the genuine transaction, which is to acquire an asset or property. This is because the

said practice/process (sell and buy back) using the PSA and PPA are simply to obtain cash money to be paid to the house developers, where the banks do not have a proper ownership risk over the property/house. In describing the modus operandi of this concept, Anwar (2003:68) argues the banks simply pose as a trader by engaging in a fictitious purchase. The banks were just added a profit component to the purchase price to make it a selling price of the property and thereafter selling back to the customer at deferred payment. The selling price as a credit could be considered as similar to the loan offered by conventional banks.

Moreover, the practice used in PPA and PSA legal documentations also reflects the concept of *bay' al-inah*. *Bay al-inah* is generally known as sale based on the transaction of *nasi'ah* (delay). The debtor sells to the creditor some object for cash which is payable immediately. Then the debtor simultaneously buys back the same object for a higher price payable in a future date. Thus the transaction is considered a loan. The difference between these two prices represents the interest. In responding to this transaction, Rosly (2001) highlights that such a practice inevitably triggers the *Shari'ah* concerns particularly how does Islamic law view such a contract: whether the sales is allowed as *prima facie*, or disallowed because the motive underlying the sales is to legalise the money obtained, which is illegal or usurious.

According to Islamic law, *bay' al-inah* is only permissible under the *Shafi's* and *Zahiris* (Al Zuhaili, 1989). They argue that since the contracts fulfilled all the requirements of a valid sale, they cannot be nullified by a mere assumption of the existence of an illegal ulterior intention to circumvent the prohibition of *riba*. According to them, legal judgment can only be given based on the expressed or manifest intention, not the hidden intention which is left to be judged by God (Rosly, 2001).

Therefore, following the arguments, the *Shafi'i* school perceives such sales are allowable because the contracts are valid as they were properly concluded. The unlawful intention (*niyya* or *qasd*) of the parties is immaterial; it does not invalidate their act, unless expressed in that act. *Shafi'i* considers that the intention of the parties is taken into account only when the invalid intention is explicitly mentioned in the contract. However, both the *Shafi'is* and *Zahiris* considered *bay' al-inah* as discourages (*makruh*) despite acknowledging its validity. On the other hand, for the other schools of law which represent the view of the majority of Muslim scholars namely *Malikis* and *Hanbalis*, they disallow it and consider *bay' al-inah* to

be void, because it is a legal trick to circumvent the prohibition of *riba* (Al-Zuhaili, 1989; Rosly, 2001).

However, *Shari'ah* scholars in Malaysia have adopted the view given by *Shafi'i* whereby they recognised the permissibility and application of BBA and *bay al-inah*. This acceptability is clearly mentioned in the resolutions issued by Securities Commission *Shari'ah* Advisory Council of Malaysia (SC, n.d). In addition, adoption to *Shafii's* view is also based on principle of public interest consideration (*maslahah*)² where this concept is deemed appropriate for all Muslim who face the problem of cash and liquidity shortage, without resorting to the conventional interest based system. Furthermore, *Shari'ah* scholars further confirmed that having a sale based on BBA/*bay' al-inah* can also be legalised based on the legal maxim on lesser of two evils (*akahf al dararain*) (Engku Ali, 2007: 456).

However, in this regard, Dusuki (2007) remarks that despite the argument to support the usage of BBA and *bay' al-inah*, there is still a limit to apply it in order to avoid from camouflaging the interest based system. Following that, Malaysian scholars have warned the relevant market players to strengthen and enhance the operational processes and documentation to comply with the permitted features of *bay' al-inah*. Moreover, since *bay' al-inah* is still regarded as a matter of different juristic opinion among the *Shari'ah* scholars, the Islamic financial institutions is further advised to limit its use in their products (Central Bank of Malaysia, 2007).

4.4.2 BBA/Bay' Al-Inah: Form against Substance

Since the methods of debt-based financing (BBA/*bay' al-inah*) mainly focus on the contractual relationship between a bank or a financier and a customer, it is said to outweigh the form over substance. In other words, the ways of determining the permissibility and legality of *Shari'ah* compliant instruments should be extended beyond the contractual approach. The strict observance to only legal and contractual matters has jeopardised the image of Islamic banks as they began to imitate the practices of their conventional counterparts (Rosly and Bakar, 2003: 1249).

² The plural of Arabic word *maslahah* is *masalih* which means welfare, interest and benefit. *Maslahah* is one of the juristic devices that have always been used in Islamic legal theory to promote public benefit and prevent social evils or corruption. Amongst the major school of Islamic jurisprudence, Imam Malik is known to be the leading proponent of upholding *maslahah* as one of the sources of *Shari'ah*.

Rosly (2010) further argues that in order to have an instrument which is in line with *Shari'ah* either in its form or substance, new *Shari'ah* compliant parameters should be taken into consideration. It should emphasise four pertinent approaches: *aqad*, *maqasid*, accounting and financial reporting and legal documentation of contract.

As far as *aqad* approach is concerned, Rosly (2010) argues that each Islamic banking product shall be considered to be *Shari'ah* compliant when it has fully complied with the requirement of the contract at hand. The *Mejelle* defines a contract as the obligation and engagement between two contracting parties with reference to a particular matter. As such, besides the legality of the product that depends on its *Shari'ah* sources namely from *Qur'anic* injunctions, *hadith*, *ijma'* or *qiyas* and the like, the validity of the contract also depend on the fulfillment of all the requirements for a valid contract. Requirements for a valid contract consist of four features: buyer and seller, price, subject matter, offer and acceptance (Rosly, 2010). Each feature indeed has its own requirement to be fulfilled. For instance, the subject matter of the contract is required to be pure and the seller holds the ownership over the subject matter prior to selling it to the buyer.

Hence, applying *aqad* approach in this contract, albeit BBA/*bay al-inah* is permissible based on the argument discussed earlier, there is still issue related to its subject matter. The question may arise on whether the bank truly buys the house and have the ownership over the house before selling it back to the customer. Moreover, further issue may arise when it involves the house which is still under construction when the time of the contract is concluded. Following that, all the parties to the contract must ensure that all the requirements for the contract must be truly fulfilled in order to become valid in the perspective of *Shari'ah*.

Besides *aqad* approach, the product shall undergo the *maqasid* test. According to *maqasid* approach, all the *Shari'ah* compliant products must be in accordance to Islamic ethics, morality and justice. Therefore, Islamic banking products must not only confine to letter of law, but it must also comply with ethics, morality and justice (Rosly, 2010).

The primary aims of the *maqasid Shari'ah* are to secure benefit and repel the harm or injury. Based on this premise, all the products should comply with the purpose of *Shari'ah*. Therefore, Islamic banks are expected to provide the service and offer products that can repel the harm commonly found in the conventional interest based system. The Islamic banking

product will not reflect the spirit of *Shari'ah* if the harm cannot be eliminated, and cause injustice to the society (Rosly, 2010). Therefore, it becomes a real challenge for the Islamic banks not to replicate the conventional system and give it Arabic names. In order to be comprehensive, the definition of *Shari'ah* compliant products should be extended to consider *maslahah* and *maqasid Shari'ah* as an essential part, and it should not only be confined to the forms of approved contracts (Siddiqi, 2006).

Applying the said principles of *maqasid* approach to BBA/*bay' al-inah*, it can be seen that the bank does not assume the risk of ownership and liability on the property which is the subject matter of the contract. Hence, if the subject matter, for instance, a house ceases to exist due to abandoned housing projects or any other catastrophe; the customer will become a victim because he has to bear the loss of the house and is still obliged to pay the monthly installment of the property to the bank. This scenario is against the spirit of *Shari'ah* as it does not protect the interest of the customer.

The next important approach is accounting and financial reporting approach. This approach requires a bank to disclose all the information about its business activities which is related to its financial strength and financial performance. The information normally consists of an annual balance sheet which summarises its assets, liabilities and ownership. In short, the balance sheet will normally reflect the financial condition of a bank.

This information is essential to help the society to make economic decisions particularly, those who are interested in becoming investors. Moreover, financial reporting becomes more useful because it explains the business transaction of the banks which includes its buying and selling activities. As such, it will report whether the transaction made between the two parties is an actual sale or loan and whether the sale transaction is taking place or not. In addition, the accounting and financial reporting must be understandable, reliable and comparable as laid down by the International Financial Reporting Standard (Rosly, 2010).

Therefore, when the Islamic banks adhere to this financial reporting standard, this proves whether the bank acts as a trader/seller or a mere lender in the BBA/*bay' al-inah* concept. Hence, if there is no actual sale transaction taking place, it can be evidenced in the bank's balance sheet. Therefore, the sale based on BBA/*bay' al-inah* is valid according to *aqad* perspective but invalid from the perspective of the accounting and financial reporting

approach as there is no actual sale or transfer of a house. Rosly (2010) further argues that without resorting to accounting and financial approach, *aqad* approach alone is no longer sufficient to examine the true legitimacy of each Islamic banking product.

On the other hand, based on legal documentation approach, rights and responsibilities of the contracting parties are clearly spelt out in the terms of the contract/ agreement. This approach is different from *aqad* approach because *aqad* is only concerned on the fulfillment of the pillars of contract. The legal documentation approach is very pertinent to safeguard the interest of the contacting parties (Rosly, 2010).

Therefore, by applying the legal documentation approach to the case of BBA/*bay' al-inah*, it clearly highlights the transfer of ownership from the customer to the bank and from the bank to the customer through a proper registration of ownership. As such, the sale should grant legal protection to the customer in the event the asset delivered cease to exist or defective. The same principle applies to the bank, when the bank is entitled to receive protection in the event the customer defaults on his debt obligation.

Hence, it can be said that if the product of Islamic banking exercises these four approaches, the product itself becomes legitimate from *Shari'ah* perspective where its form and substance are equally balanced (Rosly, 2010).

4.4.3 BBA: Sale of Non-Existent House

Presently, the property/house which is the subject matter of the BBA home financing can either be complete or under construction. As a general rule, *Shari'ah* requires the subject matter of the sale must exist and capable of delivery when the contract is concluded. Therefore, the use of BBA/*bay' al-inah* in financing a house under construction may further trigger *Shari'ah* issue on the prohibition of *gharar* (see Chapter 2 for the prohibition of *gharar*).

4.4.4 BBA: Abandoned Housing Projects

The debate regarding the sale of non-existing house during the time of a contract, inevitably has led to the issue of abandoned housing projects. This is due to the fact that borrowers either through conventional or Islamic mortgage face the risk of becoming the victim of the abandoned housing projects. This will result in a huge loss to the customer mainly in the

cases where the subject matter/house is still under construction (Razali, 2008). Under both systems of mortgage, a borrower has obtained a finance to purchase a house, but the project is abandoned, the borrower is still obligated to pay the loan to the financiers based on the terms and conditions of the mortgage agreement. The same applies to BBA/*bay' al-inah* purchases through the government financing scheme (Rosly, 2008).

Furthermore, based on the earlier discussion on the concept of risk taking, it is worth mentioning that banks do not take any risks either risk of ownership or liability attached to the house, and consider the financing agreement is separate from the risk arising from the housing project. Homebuyers who are the victim of abandoned project have to refer to the Ministry of Housing and Local Government for assistance, while still obligated to pay their mortgage (BNM, n.d).

Abandoned housing projects are defined based on these following criteria: (i) projects which have not been completed within or beyond the date of the first Sale and Purchase agreement and without any apparent activities in 6 consecutive months; or (ii) winding up petition has been registered against the developer in the High Court under section 218 of the Companies Act 1965 or any other related laws; (iii) the developer under Receiver and Manager; (iv) the developer has informed in writing to the Housing Controller that they are not capable to continue with the project; and (v) the project itself is declared abandoned by the Ministry of Housing and Local Government in line with section 11(1)(ca) of the Housing Development (control and Licensing) Act 1966 (Act 118) (REHDA, n.d).

To address the issue of abandoned housing projects, Syarikat Perumahan Negara Berhad (SPNB) is appointed as the Implementation Agent for the Abandoned Project Revival Fund to revive the abandoned projects identified by the Kementerian Perumahan & Kerajaan Tempatan or Local Government Department. Presently, SPNB was asked to revive 186 abandoned housing projects which involved 55,486 houses with the project value estimated at RM4.3 billion (MHLG, n.d).

Therefore, based on the increasingly cases of abandoned housing projects, the concept of *gharar* in BBA/*bay' al-inah* sale is vital. Such a contract is no longer appropriate to be used in financing the house which is still under construction. An alternative mode of home financing is, therefore, needed to safeguard the interest of house buyers.

4.4.5 BBA: Benchmark on Conventional Interest Rate

The method to achieve profit that depends on the conventional interest rate has drawn various criticisms for the IBF market. The concept of BBA/*bay' al-inah* allows banks to capitalise their profit up front and requires customers to pay a fixed sum payment until the tenure ends. Therefore, in order to calculate the profit, the banks will utilise the same method of pricing which depends on the conventional interest rates as a benchmark. Hence, these banks will remain profitable because the sale price (purchase price plus profit) is secured in a fixed interest rate throughout the duration of the tenure (Taib *et al.*, 2008: 236).

In fact, the reference to the interest rates itself, does not violate the *Shari'ah* concept, because it mainly remains as a reference without affecting the substance of the contract. However, in the event that the interest rate is low, it will make BBA more expensive compared to a conventional loan. This situation inevitably creates injustice on 'pious' customers. However, for some customers who are profit oriented, BBA provides incentives for them to switch to the conventional loan. In addition, the banks will suffer losses when the interest rate is high as they cannot increase the profit due to BBA is fixed price (Taib *et al.*, 2008: 236). In this regard, Kader and Leong (2009: 199) argue that despite operating on interest free principles, Islamic bank financing in a dual banking system is exposed to interest rate risks.

In order to overcome these difficulties, some banks have adopted a new solution by introducing a variable rate and not a fixed rate regime. In 2003, the Central Bank of Malaysia introduced a variable rate financing which aims at offering a hedging to Islamic banks in terms of its profitability and becoming competitive as their conventional counterparts (Amin and Chong, 2007:51).

Based on the new concept of the variable rate, customers will pay more during inflation because *hibah* is at a minimum. On the other hand, when deflation happens, they need to pay less because *hibah* is awarded to them. The introduction to a new variable rate, however, has caused further criticism to BBA/*bay' al-inah* in term of its *Shari'ah* permissibility. Its proponents argue that the variable rate is allowable on the basis of *maslahah*. Its opponents claim that the new variable rate is nothing more than applying the interest in the Islamic financing concept. This is the reason why the variable rate is not fully practiced by Islamic banks in Malaysia (Amin and Chong, 2007:51).

4.4.6 BBA: Risk Taking or Risk Avoidance

Based on the spirit of *Qur'an*, the theory of profit requires the existence of equivalent counter value to legalise a profit created either from banking or non-banking business. In other words, profit creation in a trade and commerce must contain an equivalent counter value. Therefore, the element of risk taking must exist in order to have an equivalent counter value for the profit creation (Rosly and Bakar, 2003: 1251).

Since Islam promotes the ideal concept of profit and loss sharing, the element of risk taking must be evident through the exercise of skills, rights and duties in the contract obligations. For instance, if there is a sale transaction, both parties must have rights and duties in performing the contract. The seller should provide warranties to the buyer in the event that the subject matter of the contract becomes defective or cease to exist. Similarly, the seller has the right to recall the facility in the event the buyer defaults in the payment.

However, sale based on BBA practised in Malaysia is perceived as not complying with *Shari'ah* because banks do not assume the risk of ownership and liability over the subject matter of the sale. In other words, if a bank sells a house to a customer, the bank will not provide warranty to the customer if the house becomes defective or cease to exist in the future. For this reason, the sale transaction based on BBA is deemed to be risked avoidance and not in accordance to the spirit of *Shari'ah*.

4.4.7 BBA: Civil Courts' Jurisdiction

As previously discussed in Section 4.1, Islam is declared as the religion of the federation. However, Islamic law in Malaysia is limited to family law and certain religious offences. These matters on Islamic law are provided in the state list of the Ninth Schedule of the Federal Constitution, and therefore fall under the jurisdiction of *Shari'ah* court of each state in Malaysia. Hence, by virtue of Article 121 (1A) of the Federal Constitution, *Shari'ah* courts have an exclusive power to hear the cases, if it involves the matters related to Islamic law as stated in the State List (Yasin, 1997: xciii).

Nevertheless, by virtue of the Federal List of the Federal Constitution and further affirmed in the landmark case of *Bank Islam Malaysia Berhad v. Adnan Omar* [1994] 3 CLJ 735 that if the matters related to banking either conventional or Islamic ones, the civil courts shall have jurisdiction to hear such cases because *Shari'ah* courts can only decide the cases that fall under the State List, and therefore excludes any cases relating to commercial laws such as Islamic banking (Illiayas, 1995; Hasan, 2008).

As such, all the Islamic banking matters shall be decided by the judges in the civil courts based on the civil laws which consist of statute law and English law (Yasin, 1997: cxciii). Because of the nature of the qualifications and training of civil courts' judges, these cases will solely be judged in accordance to statute law and English law because they are not competent to decide on Islamic banking matters, particularly cases involving *Shari'ah* concerns.

The situation is approved in the case of *Bank Islam Malaysia Berhad v. Adnan Omar* [1994] 3 CLJ 735 and *Dato' Nik Mahmud bin Daud v. Bank Islam Malaysia Berhad* [1996] 4 MLJ 295, whereby the judges in both cases dealt more on applying the civil technical aspects without address the *Shari'ah* issues involved. In the former case which was the first case on BBA transaction, the High Court held that the defendant was liable to pay the whole amount of the selling price on the ground that he knew the terms of the contract, and knowingly entered into the agreement. In this respect, based on the common law approach applied by the court, both parties were bound to the terms and conditions of the financing agreement (Hasan, 2008).

Therefore, it was proven that in the early cases, the legality of BBA/*bay'al-inah* concept was interpreted in accordance to letter of law without giving any attention to the spirit or *maqasid Shari'ah*. However, when there were numerous challenges made in civil courts on the issues of Islamic banking matters, particularly on BBA/*bay'al-inah* concept, the courts indicate their interest to critically examine the underlying principles and financing facility offered by the banks. This approach can be seen in the case of *Affin Bank Berhad v. Zulkifli Abdullah* (2006) 3 MJL 67 whereby the court held that the proper approach is to examine whether the current implementation of Islamic banking is contrary to the religion of Islam. The judge in that case criticised the attitude of the early court in strictly applying common law approach to the Islamic banking matters (Hasan, 2008).

Presently, the approach of the court can be seen in the case of *Arab-Malaysia Finance Berhad v. Taman Ihsan Jaya Sdn Bhd* [2008] 5 MLJ where the court considers deferred payment (BBA) of the selling price is a credit or a loan, and any profit claimed or charged by the bank as an additional to the facility amount is interest and the sale transaction based on BBA was not considered bona fide sale. In addition, the court also mentioned that excessive charge of profit to arrive to the selling price under BBA facility imposed a great burden on the defendant that would be contrary to the intent and teaching of Quran (Hasan, 2008).

However, the plaintiff in this case made an appeal before the Court of Appeal and it was held that BBA facility is a valid transaction, and therefore, the judgement is in favour of the plaintiff. Similarly, in the latest case of *Arab-Malaysian Merchant Bank Bhd v. Silver Concept Sdn Bhd* [200] 6 MLJ 295, the court held that the BBA transaction is a bona fide sale and valid transaction enforceable by the law.

Having discussed the cases above, it is clear that BBA facility was dotted by many criticisms on its legality and *Shari'ah* permissibility not only among the scholars but also in the court of law itself. Since Islamic banking cases fall under jurisdiction of civil courts, all the documents related to Islamic banking instruments, must be in accordance to Islamic law, existing civil laws and should be structured in the manner enforceable before the civil courts.

4.5 DEMAND OF ISLAMIC MORTGAGE

Over the past three decades, Islamic banking has appeared as one of the fastest growing industry that has received global acceptance around the globe either Muslim or non-Muslim states. In 1975, with a humble beginning of merely a few hundred thousand dollars, it now has grown to a hundreds of billion dollars in 2005 (Iqbal and Molyneux, 2005). In describing on the growth of Islamic banking in Malaysia, Bacha (2008:211) highlights that Malaysia has experienced an impressive growth. Having grown at an annual average in excess of 50 per cent, over the last decade, it now accounts for approximately 10 per cent over the country's total banking sector. The trend is similar on the part of Islamic housing finance whereby the growth has gradually increased over the years.

Table 4.5 depicts the demand for the Islamic housing finance in the Malaysian market from November 2008 to November 2009. The table it clearly shows that the demands for the Islamic housing finance products have increased either for Islamic banks or commercial banks with an Islamic banking scheme. In fact, the growing demand for the Islamic housing finance is driven by several factors that are discussed later.

Table 4.5: Trend of House Financing Offered by Islamic banks and Commercial banks by its Islamic Window.

Period	Home Financing		Total (RM Million)
	Islamic banks	IBS of Commercial Banks	
Nov 2008	18,230.4	531.5	18,671.9
Dec 2008	18,454.9	487.1	18,942.0
Jan 2009	18,696.5	505.8	19,202.4
Feb 2009	18,844.7	520.0	19,364.7
Mar 2009	18,974.9	541.7	19,516.6
Apr 2009	19,359.2	556.9	19,916.1
May 2009	19,577.6	567.2	20,144.7
Jun 2009	19,820.1	577.8	20,397.9
Jul 2009	20,153.9	587.4	20,741.3
Aug 2009	20,336.5	591.7	20,928.1
Sep 2009	20,905.4	593.5	21,498.9
Oct 2009	21,324.4	595.0	21,919.4
Nov 2009	21,726.4	596.5	22,322.9

Source: Central Bank of Malaysia (2009)

Since the prohibition of *riba* which is strictly against the teaching of Islam, it provides the opportunity for the Islamic banks to innovate the financial products based on interest free concept. Hence, the interest free financial products receive great demand from those people who are 'Islamic value oriented', and conscious about involving themselves in interest based system (Samad, 2007; Taib *et al.*, 2008:235; Amin *et al.*, 2009:231; Haron *et al.*, 1994; Tameme and Asutay, 2012). Therefore, based on the fact that 60 percent of the Malaysian population is Muslim, Islamic banks should do more products' promotion and provide financial counselling to attract Muslim customers to use more Islamic banking products (Amin and Isa, 2008: 205). Dissemination of information is crucial in promoting the Islamic housing finance particularly among the Muslims.

Besides the religious factor, the price factor is another motivation in choosing an Islamic mortgage. Therefore, during the inflation together with the competitive rate offered by Islamic banks, the demand for Islamic home financing will be higher (Taib *et al.*, 2008:235; Amin *et al.*, 2009:231; Dusuki and Abdullah, 2007:154; Haron *et al.*, 2007). In addition, some Muslim customers also have a great concern on the amount of monthly repayment of the mortgage. This concern was raised by Samad (2007) whose survey in Malaysia revealed that the main reason for not using Islamic housing finance is the expensive fixed monthly repayments compared to a conventional one. As such, allowing flexibility in term of repayment would make the Islamic housing finance more appealing to their customers.

However, Samad further points out that for some non-Muslim customers, they consider a fixed payment for BBA as an advantage. This is because Islamic mortgage with fixed monthly repayment can offer them a peace of mind. This payment scheme does help their users to manage the cash flow better. For instance, one of banks in Malaysia has 70% Chinese customers demand for Islamic housing finance (Samad, 2007).

In addition, an excellent service quality would also increase the demand for Islamic home financing product (Dusuki and Abdullah, 2007). Amin and Isa (2008: 205) and Parasuraman *et al.* (1991) highlight that besides the empathy, tangible, responsiveness, assurance and compliance factors, the main driver for service quality is reliability. This view is also in line with the situation in the UAE Islamic banks whereby the customers perceived reliability as the most important part of service quality (Al Tamimi and Al Amiri, 2003).

Amin and Isa (2008: 205) further emphasise that reliability requires the banks to provide services at a promised time with the capability to solve problems and offer wide ranges of products and services to the customers. Then, Samad (2007: 254) also points out that Islamic banks should also expedite the process of mortgage application to ensure the approval process can be done faster in order to attract more potential customers in using the product.

Although the customers are satisfied with the service quality of the banks, it does not guarantee that they will not switch to other banks. Therefore, in improving the relationship between the banks and the customers, the requirement of trust is crucial. Based on this concept, the customers believe that all the products offered by the banks are in consistent

with the *Shari'ah* requirement. Such perception is deemed to become significant as it influences the customers decision towards Islamic banks.

However, it is worth mentioning that although the growing interest and consciousness about Islamic financial product has led to a great demand, a mere approval from the *Shari'ah* board no longer guarantee the demand for Islamic home financing as the customers are far more critical than has often been assumed (Taib, 2008). Therefore, further improvement to the product is required which may include the capability of Islamic banks in providing good value of money for Islamic housing finance offered. They should not only rely on the faith factor in promoting the products for Muslims (Samad, 2007).

Hence, there are several factors which determine the demand for Islamic housing finance in Malaysia. Besides *Shari'ah* compliant factor, it can be seen that most of the factors mentioned are related to customers' interest. Islamic banks should strive to offer the products which emphasise these factors to ensure a greater demand future.

4.6 FUTURE OF BBA

Since the introduction of Islamic banking and finance in Malaysia, the demand for Islamic mortgage is thriving. There are many factors that contribute to customers' patronage such as religious factor, convenience and service quality. However, since the most dominant instrument offered for Islamic mortgage is BBA/*bay' al-inah*, there are inevitably certain implications that affect the future of Islamic mortgage in Malaysia.

4.6.1 Future Implication of the BBA

Siddiqui (2005: 200) highlights that some of the Islamic bankers have claimed that giving the interpretation based on letter of law would be sufficient in order to islamise the banking sector, even if the end result is quite similar to the conventional counterpart. However, he argues that the ideal model for Islamic banking should be based on optimal sharing risk and returns of the businesses by the parties concerned. This model is not only capable of assigning social justice to the public at large, but also naturally accelerates to significant implications for instances, better income distribution patterns, increased financial stability and a more humane attitude among all the parties concerned.

Therefore, the unlimited use of debt based financing in Islamic banking and finance will experience a similar problem of economic instability experienced by their conventional counterparts. This view is supported Rosly and Bakar (2003: 1249) who claim that Islamic banking that mainly relies on interest like products is less likely to outshine mainstreams banks on efficiency terms. In other word, less efficiency will result in fewer customers.

In addition, based on the theory of substitution, the shifting effect is expected to increase as the demand for the fixed rate asset financing declines, and therefore, Islamic bank will also suffer a decline (Rosly, 1999:478; Kader and Leong, 2009). Therefore, a lower demand for BBA is expected to increase excess reserves, and leads to lower profits on the part of Islamic banks. Furthermore, non-Muslim customers become the main beneficiaries of dual banking system since they have more options than the Muslim customers (Rosly, 1999: 478).

This view is supported by Razak *et al.* (2008) who claim that since BBA in Malaysia receives many criticisms from various perspectives, there may be low intention to use BBA as a mode to finance a house among the public in future. The situation deteriorates due to the fact that through debt based financing, Islamic banks tend to choose risk avoidance strategy which causes the removal of morality from the banking business (Rosly and Bakar, 2003), and ultimately, the interest of home buyers are neglected.

4.6.2 Future Direction of Islamic Mortgage in Malaysia

The ideal model of Islamic banking is pivotal to ensure the sustainability of the system as a whole. As such, the reformation of the application of Islamic banking and finance is urgently needed. However, new reforms do not translate into a complete and total abrupt discontinuation of the current practice. Siddiqui (2005:201) suggests a gradual move towards a better system of Islamic banking that is capable of eliminating interests in real sense which is also in line with the spirit of *Shari'ah*. Rosly and Bakar, (2003) and Anwar, (2003) have maintained that Islamic banking should operate with a social orientation in their businesses, which does not necessarily means charity, but are responsive to ethical and become real trader particularly in exercising *murabahah* and BBA concept.

Siddiqui (2005) further proposed necessary strategies to be adopted in order to promote the optimal profit and sharing approach. More importantly, the government should encourage Islamic banks to increase their profit and loss sharing assets by a small percentage every year.

The small percentage of 3% to 5% is deemed sufficient for a move. Besides providing the necessary help, the government should also strive to establish a model of profit and loss sharing Islamic banks in the private sector that have an accelerated target for excelling in that area. Furthermore, for the smooth running of the Islamic banks, professionals who firmly believe in the need and practicality of profit and loss sharing Islamic banking should be made responsible to manage the institutions. This view is supported by Aziz (2006) who maintains that a pool of talents and professional skills in this area is crucial to ensure future sustainability of Islamic banks.

In addition, Aziz (2006) points out that future sustainability of Islamic banking and finance requires high quality of products and services offered. A mere *Shari'ah* compliant alone is no longer sufficient to guarantee their sustainability. Therefore, as far as innovation is concerned, it is a great challenge for Islamic banks to provide a comprehensive range of Islamic financial products and services that are not only competitive and capable to meet the requirement for today's consumer and businesses, but also *Shari'ah* compliant.

Future sustainability also requires a comprehensive legal infrastructure and legal redress arising from disputes in Islamic financial transactions (Aziz, 2006). Each party involved in Islamic financial transaction should be given appropriate rights and their interest should also be protected by sufficient legal device.

Then, consumer education and awareness of Islamic banking and finance should also be emphasised. This requires a collective effort from all the parties, particularly the financial institutions and the government. The role of mass media is also recognised in their effort to promote and disseminate information among the customers (Abdul Samad, 2007; Karim, 2010).

As far as Islamic home financing is concerned, due to so many issues regarding the use of BBA, it is time for a diversification into equity financing as an alternative method of financing in order to sustain the future needs of the society, particularly the Muslim. Therefore, based on the earlier discussion, MM can be made an alternative to replace the current BBA for Islamic home financing (Rosly, 1999; Meera and Razak, 2005; Taib *et al.*, 2008; Razak *et al.*, 2008; Kader and Leong, 2009). Besides capable of complying and fulfilling all the requirements for *Shari'ah* contract, MM is also able to promote the true spirit

of Islam in providing justice to the house buyers. The details of this instrument will be discussed in Chapter 5.

4.7 CONCLUSION

This chapter has presented a broad discussion on the provision of Islamic home financing in Malaysia. It begin with an introduction to the general application of Islamic law in Malaysia, and the endeavour of the Malaysian government in promoting the application of Islamic banking and financial system to operate alongside with their conventional counterparts. This section has also included the development of IBF and its current status in the Malaysia market.

The growth of Islamic banking system is evident trough the increasing number of Islamic financial institutions from 1983 until present. Since then, the application of Islamic home financing has been introduced to meet the needs of the society for an interest free banking system to own a house. The next section highlights the current providers of Islamic home financing in Malaysia, and it mainly focuses on Islamic banks as the main providers. Also, the trend of financing based on BBA concept has been included.

Then, a discussion on the issues related to the BBA home financing is presented. This section is important because it has presented evaluation of current state of BBA Islamic home financing as a dominant mode of Islamic mortgage. The main issues discussed are: permissibility of BBA; BBA: form against substance; sale of thing which is not existing at the time the contract concluded; abandoned housing projects; BBA: risk taking or risk avoidance and BBA: in civil court jurisdiction. These issues inevitably become a catalyst for the introduction of MM home financing in Malaysia where it is deem to be a better alternative, as the contract is derived from equity based financing of *musharakah*.

Then, the discussion is further continues with the growth of Islamic home financing in Malaysia. This includes the demand and supply of BBA as the mode of Islamic home financing. Thereafter, the next section has also included the progress of Islamic home financing with a great concern on the future implications of the current method of BBA. Finally, the last section has discussed the future directions for Islamic home financing

particularly how to ensure the complete system of Islamic home financing is sustainable for future needs of the society particularly on homeownership.

CHAPTER 5

***MUSHARAKAH MUTANAQISAH* HOME FINANCING IN MALAYSIA: AN EXPLORATORY SURVEY**

5.1 INTRODUCTION

Having discussed earlier in the preceding chapter 4, the application of BBA is surrounded with various crucial issues. Therefore, the demand to shift to more equitable mode of home financing which is from debt based financing to equity based financing is increasingly encouraged by the Central Bank of Malaysia. This pressing situation is a catalyst for the Islamic banks to offer a better Islamic home financing product, which is MM home financing. Hence, apart from BBA, MM is finally offered by several Islamic banks as their attempt to phase out BBA home financing.

This chapter starts by discussing the basic concept of profit and loss sharing modes and the rules of *musharakah*. Then it explains the theoretical framework which concentrates on MM home financing in Malaysia as an alternative to BBA home financing. It also highlights the application of MM in home financing, followed by a discussion on its legitimacy and the governing law. Finally, it discusses the issues related to its application from the *Shari'ah*, legal and operational perspectives.

5.2 PROFIT AND LOSS SHARING IN ISLAMIC FINANCE

Capitalist system which is based on the practice of lending on interest inevitably yield various problems to the financial market, such as inflation, recurrent business cycles, unemployment, increasing inequality and poverty amidst plenty (Siddiqi, 2006). Based on this premise, the Islamic banking posits that an efficient financial system should be largely based on profit sharing contract rather than lending, whereby it was arguably contributed to greater stability in the economic system in general and financial markets in particular (Siddiqi, 2006).

Profit and loss sharing is the most important and noticeable feature of the theoretical literature on Islamic finance. Generally, it can be defined as “a contractual arrangement between two or more contracting parties, which allows them to pool their resources to invest in a project to share in profit and loss” (Farooq, 2007: 68). Most of Islamic economists opine that profit and loss sharing contracts are desirable and prevailing in an Islamic context because reward sharing is related to risk sharing between the contracting parties (Dar and Presley, 2000: 3; Warde, 2000).

Having said that, the banks' business risk inherent in equity based instruments such as *musharakah* and *mudarabah* transactions are, however, much greater than in debt based financial instruments such as *murabahah*, instalment sale, or mark-up, *ijara* and the like. For the equity based financing, the profit or loss of the joint venture is not certain in advance, whereas in debt based financing, it is determined in advance. The popularity of these latter methods stems from this certainty where the profit is guaranteed as the debts are due to the banks as financiers. Saeed (1996: 87) explains that in the case of debt financing, particularly *murabahah*, there is a possibility of profit without the risk of possible losses, except the loss in the case of bankruptcy or default on the part of the buyer. Furthermore, the risks exposed in debt based financing are typically insurable and are actually insured against and passed over to the other party (Siddiqi, 1983:52). The reliance of Islamic banking and finance on debt based financing represents convergence to conventional financing through a mimicking process, except Islamic financial contracts in debt based financing complies with the letter of law of Islamic jurisprudence. This cause the debate on ‘form’ vs ‘substance’ indicating that legal compliance perhaps is not enough to be considered *Shari’ah* based finance as opposed to *Shari’ah* compliant finance (Agha, 2009; Ahmed, 2011).

In this regard, Siddiqi (1983: 52) warns the Islamic finance industry that a financial system built predominantly around debt based instruments can hardly claim superiority over the conventional banking system based on interest on grounds of equity, efficiency, stability and growth. Usmani (2002: 313) also emphasises that Islamic philosophy cannot be translated into reality unless the use of *musharakah* is expanded by Islamic banks. However, bankers remain as bankers, where most of them are conservative money managers that wish to assess their profits well in advance, and with a high degree of certainty. Moreover, they are answerable to their depositors who are mostly risk-averse and seek no business profits, but only inflation-adjusted return to the deposits (Yasseri, 1999).

However, it does not mean all debt contracts like *murabahah* are forbidden in Islam (Chapra, 2011). They have to be free from interest. Debt based contracts or mark-up sale pricing are the common business transaction. However, they are not remunerative and, therefore, cannot play a significant economic developments in Islamic finance (Farooq, 2007). The issue is not on the permissibility of debt-creating modes, but a preference for equity-based modes over debt-creating modes. As such, the aim is to create a healthy balance between debt, as the economy with highly reliance on debt will cause a highly risky economy that links to the global crisis (Ayub, 2007: 86).

Besides, banking heavily based on this type of transactions robs the Islamic Financial Institutions of distinctively Islamic characteristics and most importantly, Islamic banking was designed for greater economic development of Muslims, thus over-reliance on debt based financing is not helpful in that regard (Farooq, 2007: 72). Stone (2009) also describes among the reasons of the USA financial crisis is over dependence on debt and the private capital markets to finance housing. He mentions that since World War II, house –related debt component has been growing rapidly in the entire financial system, even faster than the overall economy and hence faster than the ability to repay it.

Albeit all the theoretical modes of Islamic banking are either based on *mudarabah* or *musharakah*, in reality the practice of Islamic banking is far from these two models. As evidenced by Iqbal and Molyneux (2005), Shinsuke (2007), Aggrawala and Yusuf (2000) and Asutay (2007), most of Islamic banks prefer to provide financing based on mark-up, commissioned manufacturing, or on leasing bases. Profit and loss sharing features indeed marginally in the practice of Islamic banking and finance (Dar and Presley, 2000: 3). The tendency of avoiding PLS modes can also be explained as follows:

- (i) The problems in implementing profit and loss sharing modes particularly *mudarabah* contract, is inherently vulnerable to agency problems as entrepreneurs have disincentives to put in effort and have incentives to report less profit. However, in this problem, Wilson (2002: 201) comments that *musharakah* is a way to avoid the problem of moral hazard due to the fact that both Islamic banks and the entrepreneur having more equal access to information. However, in practise, Islamic banks are often reluctant to offer *musharakah* because of the set-up and administrative costs;

- (ii) Profit and loss sharing modes necessitate well defined property rights to work effectively. However, property rights are not well defined or protected in most of Muslim countries;
- (iii) Less risky modes of financing namely debt based financing are needed to be offered due to severe competition from conventional banks and the financial institutions which are already established;
- (iv) Equity financing is less favourable for funding short term projects due to the ensuing high degree of risk compared to debt financing which is certain in term of degree of liquidity;
- (v) Unfair treatment in taxation in profit and loss sharing system;
- (vi) Secondary markets for profit and loss sharing contracts are non-existent that makes the financial resources failed to be mobilised.

Usmani (2002) highlights that the practical problems in implementing *musharakah* particularly in the present circumstances is because Islamic banks work in isolation and mostly lack the support from the government. Furthermore, interest-free banking procedures, including those concerning *musharakah*, have become complicated, making the task difficult for bank practitioners, as well as for clients to understand. Such complications can lead to different interpretations of the same procedures in different banks (Yasseri, 1999).

Moreover, in term of its implementation, unlike debt based financing, profit and loss sharing modes cannot be systematically made dependent on collateral or guarantees to reduce credit risk. Therefore, operational risk for profit and loss sharing mode can arise from various sources which among others include non standardised natures of some Islamic financial contracts and lack of efficient and reliable *Shari'ah* litigation system to enforce financial contracts (Sundararajan and Errico, 2002: 6)

In order to translate profit and loss sharing modes into a reality, Farooq (2007: 84) suggests that the modifications to the profit and loss sharing contracts is allowed, although it would need to be significantly delinked from the classical Islamic jurisprudence. This is in line with previous literature by Iqbal *et al.* (1998: 65), where they emphasise the importance of

financial engineering and state that the use of Islamic financial tools is just limited to the classical instruments developed centuries ago. Such tools may serve as useful guidelines for Islamic contracts, but there is no reason to be restricted only to them. In this relation, Siddiqi (2006:29) also highlighted that, besides complying with the letter of law as laid down in Islamic jurisprudence, the implementation of any Islamic financial products require proper understanding of the objectives of *Shari'ah* via macroeconomic concepts and appropriate tools. This effort is imperative because it would be capable of analysing complex socio-economic implications in accordance with the spirit of *maqasid*. Dusuki (2008) and Ahmed (2011:158) further emphasise that *Shari'ah*-based product should be capable of fulfilling the legal and *Shari'ah* requirement. Therefore, in order to avoid any convergence to conventional counterpart, the need of Islamic financial products that are capable of fulfilling the letter of law and spirit of *Shari'ah* is crucial towards achieving *Shari'ah* goal of justice and fairness. In particular, if the implementation of profit and loss sharing contracts is done without any safeguards, it will also lead to inefficiency and inequity (Naqvi, 2000: 42).

5.3 BASIC TYPES OF MUSHARAKAH

It is worth mentioning the basic concept and rules of *musharakah* before expanding MM home financing since it gains its root from the former. *Musharakah* or *shirkah* is a form of partnership where two or more persons join their capital or labour together to share the profits, manage the business, and enjoy similar rights and liabilities. The concept of *musharakah* can be traced back during the times of the Prophet when the *Ansar* and *Muhajirin* joined as partners and traded in the form of *musharakah* (Al Harran, 1995: 2). The term *musharakah* is commonly used in Islamic banking and finance as opposed to *shirkah*, which is common in Islamic jurisprudence and all these modes of sharing or partnership are term as *shirkah* in Islamic *fiqh* (Usmani, 2002:5).

According to Al Harran *et al.* (1994:30) and Naim (2011), *musharakah* or *shirkah* can be divided into types which are:

- *Shirkatulmilk* (partnership in ownership)
- *Shirkatulaqd* (partnership by contract)

Shirkatulmilk means co-ownership that comes into an existence when two or more person posses joint co-ownership of certain asset. Generally, this type of partnership is not for sharing the profit, which the co-owners may use the property jointly or individually. In the case where the joint property is used by one of the partner, the other partner may demand rental for his part of the property from the benefiting partner. The distribution of revenue of this type of partnership is always subject to the proportion of ownership (Ayub, 2007; Naim, 2011).

On the other hand, *shirkatulaqd* is created when there is an offer and acceptance between two or more parties involved in most modern business. The AAOIFI Standards defines it as ‘an agreement between two or more persons to combine their assets, labour or liabilities for the purpose of making profit’. The fundamental element for this partnership is where the partners are considered agents to each other, and therefore, one partner neither sell his share without the other partners’ consent, nor guarantee capital or any profit of the other partners. Contractual partnership is further divided into several types depending on the subject matter of partnership namely capital, labour or personal creditworthiness (Ayub, 2007: 309; Naim, 2011).

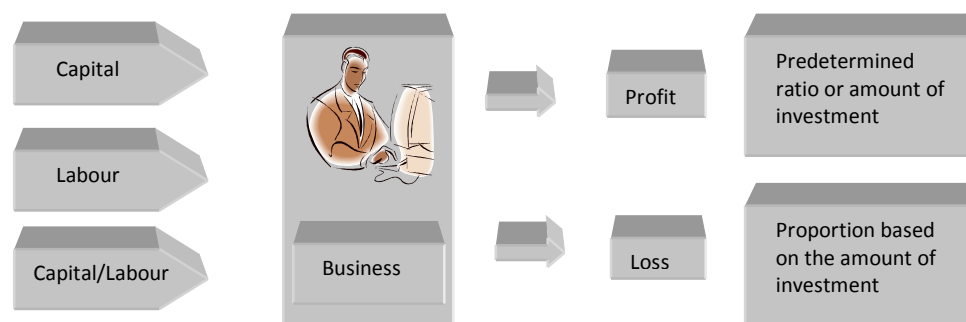
5.4 BASIC RULES OF MUSHARAKAH

There are certain characteristics which are peculiar to the contract of partnership which are as follow (Usmani, 1999 and Ayub, 2007):

- a. The ratio of distribution of profit must be agreed and fixed upon the time of execution of the agreement otherwise the contract of *musharakah* is not valid;
- b. There are several opinions among Muslim jurists on the ratio of profit to be distributed. Imam Malik and Imam Shafii opine that it is necessary for the validity of *musharakah* that each partner sets the ration of profit exactly as per their ration of investment. However, Imam Ahmad states that the ration may vary from the investment ratio (Ibn Qudamah, 1972: 140). In this relation, Imam Abu Hanifah adds that in the case of sleeping partner, the ratio of profit cannot be more than the ration of investment.

- c. In a case of loss, Muslim jurists unanimously agree that each partner shall suffer the loss exactly according to the ratio of investment, which is based on famous maxim namely ‘profit is based on the agreement of the parties, but loss is always subject to the ration of investment’ (Rahman, 2010:30). However, it is valid according to AAOIFI standard that one partner can take responsibility for bearing the loss, at the time of loss, without any prior condition.

Figure 5.1: Principle of Profit and Loss Sharing in *Musharakah*



Source: Shinsuke (2010: 67)

- d. In *musharakah*, the general principle is that every partner has a right to participate in its management and work for it. However, the partners may agree that the management will be carried out by one or more partner only, while the rest will remain as sleeping partners.
- e. Every partner has the right to terminate the *musharakah* at any time after giving his partner a notice to its effect. The termination of *musharakah* can also be done in the case of any of the partners die or become insane or any other incapable act which can be considered affecting a commercial transaction.

5.5 MUSHARAKAH AS AN ISLAMIC MODE OF FINANCING

Albeit *musharakah* contract is not widely used as a mode of financing by the Islamic banks compared to debt financing, there are indeed various forms of *musharakah* that can be applied in the contemporary finance. They include *musharakah* in short-term project

financing, partnership financing and joint venture, MM financing, *musharakah* in venture capital and *musharakah* in Islamic insurance as well as *sukuk musharakah*.

The examples can also be seen in Bank of Muamalat of Indonesia when it opened a pilot project for the Bandung Branch to implement *mudarabah* and *musharakah* in the West Java province. There were also two forms of *musharakah* contracts used by the banks in Iran, namely civil partnership and equity partnership where civil partnership dominated other modes of financing (Al Harran, 1994: 93). Al Harran further highlights that *musharakah* marketing model for socio economic reformation and reconstruction in eradicating poverty among fishermen in Terengganu, Malaysia. Again, having a share of 25.4% in Islamic banking industry in Pakistan, MM is currently the second most utilised mode of financing after *murabahah* that is being used in commercial and corporate economic activities, small medium entrepreneurship and consumer sectors where in products for auto, housing, machinery and equipment are offered. Similarly in the United Kingdom, the HSBC Amanah Finance and Lloyds TSB have offered housing loans based on MM. As such, it is clearly shown that the contract of *musharakah* has been applied in various forms of financing by Islamic and non Islamic banks throughout the world (Smolo and Hassan, 2011: 249).

As regard to home financing based on MM, it can be considered to be a hybrid product which is relatively a new type of financing method based on several Islamic subcontracts which normally consist of partnership, sale and a lease contract. This new type of financing contract has been suggested by contemporary jurists keeping in mind the problems alleged while discussing the traditional *musharakah* principles in the broader economic perspective. It is “a form of co-ownership in which two or more persons share the ownership of a tangible asset in an agreed proportion and one of the co-owners undertakes to buy in periodic instalments the proportionate share of the other co-owner until to such intangible asset is completely transferred to the purchasing co-owner” (Siddiqi, 2010: 114).

This contract will normally involve the concept of *musha'a*, which means undivided ownership of the asset by the partners. All co-owners are owners of each and every part of the joint property on a pro rata basis, and therefore, one partner cannot claim a specific part of the property leaving the other part for other partners. Then, it is allowed to lease *musha'a* to another joint partner (Ayub, 2007).

These three subcontracts generally exist when there is a partnership by ownership between two or more persons; leasing by one partner its share in the asset to the other partner; and selling by one partner its share to the other partner. Each contract involved in this arrangement should be separated and independent from each other to ensure it is permissible by *Shari'ah*. In the present practice by Islamic financial institutions, MM is being used in such a manner that lease/ sale is made to the co-partners, in respect of which there is no difference of opinion among the jurists (Ayub, 2007: 338).

Ayub (2007) further highlights that MM can be conducted both in respect of partnership in ownership (*Shirkatulmilk*) and contractual partnership (*Shirkatulaqd*). However, these different choices of partnership will result in different implications that need to be taken into consideration in order to ensure *Shari'ah* compliance which can be summarised as follows:

Table 5.1: Difference between Partnership Based on *Shirkatulmilk* and *Shirkatulaqd*

		Based on <i>Shirkatulmilk</i>	Based on <i>Shirkatulaqd</i>
1.	Ratio of profit	No need to be determined, each partner own both risk and reward proportionate to his share	Must be clearly determined and may be disproportionate to the ratio of equity which depend to mutual agreement between partners
2.	Ratio of loss	Each partner shall bear ownership related expenses/liabilities or loss, on pro rata basis	In accordance with the ratio of equity
3.	Price of share	Must be based on market value; no pre-agreed price allowed	Can be based on pre-agreed price

Ayub (2007) further explains that MM is normally used by Islamic financial institutions for housing finance business on the basis of *shirkatulmilk* or partnership by ownership. Its normal procedures and documentations can be divided into 3 main steps:

- a. Formation of joint ownership through a *musharakah* agreement.
- b. Rent agreement. Both parties agree that the banks will lease out its undivided share to the customer as partner, against certain rental to be governed under the rule of Islamic leasing (*ijarah*).
- c. Undertaking to purchase the bank's share in the joint property. It will normally contain the price schedule at which the client has to purchase the units of shares from the bank regularly. In addition, the arrangement also includes the nature of security/

guarantee to be provided by the client. Albeit it is normally treated as equitable mortgage of the financed property, the bank may acquire additional security from the client particularly in view of his financial position.

Once the client has fully acquired the bank's share of the property, the partnership comes to an end with the client becoming the sole owner. However, if the client fails to fulfil his undertaking as mentioned in the partnership agreement, the asset may be sold in the open market and the bank as a aggrieved partner by such failure shall be entitled to recover the following (Siddiqi, 2010: 115):

- a. Actual loss that is defined as the difference between the market price and the price mentioned in the undertaking, if any, but not included the opportunity cost.
- b. Any gain on a sale of asset, shall be shared by the partners according to their respective proportion of investment or capital at the time of such sale.
- c. The partner also entitled to recover outstanding periodic payment in respect of the period for which the other partner has actually used or possessed the asset which shall be payable to such co-partner.

Apart from that, it is also essential for both partners to adhere to and fulfil all the terms and conditions in respect of different stages in the process of MM arrangement namely partnership, *ijarah* and sale. Most importantly, the proportionate share owned by each partner must be known and defined in terms of investment. Any expenses related to ownership may be borne jointly by the co-partners in the proportion of their co-ownership. However, any loss arises shall be borne by the co-partners in the proportion of their respective shares or investment.

Furthermore, it should be noted that the application of *Shari'ah* principles in MM contracts creates a unique relationship comprises of the rights and obligations of the parties to the contract. Based on the report made by IFBS (2010), these contracts will expose banks to both market risk and credit risk. Market risk is associated with the joint ownership of the property which is a house and credit risk arises in relation to the obligation on the part of the customer to acquire, and on the banking institutions to sell its share of ownership in the asset.

As such, in meeting such challenges based on these distinct risks, the banks need to have and adopt more robust methodologies together with reliable and timely data, capable of identifying and offer the best forecast of any potential losses arising from adverse developments in the credit profile of the customer. The bank's infrastructure and risk management processes should also be dynamic in handling these risks. The business risk in Islamic finance can be managed, but cannot be totally eliminated from the economic activities. The cardinal principle is that risk cannot be separated from the ownership. In other words, the owner of the asset has both the risk and reward of that asset. This is consistent with the classical legal maxim 'gain is justified by taking liability of loss' (Ayub, 2010: 24). The example of risk management for MM contracts can be seen in the Table 5.2.

Table 5.2: Management of Risks in MM Contract

	Type	Description	Potential case	Management
1.	Rate of return risk	Potential loss of future income arising from early settlement	Full transfer of banking institution's ownership to customer	Provide appropriate mechanism to compensate bank's loss of future income arising from early settlement
2.	Credit risk	Non payment of rental by the customer	Customer defaults	-Incorporation of purchase undertaking (<i>wa'd</i>) as risk mitigant (exit strategy) in the event of default -Use of security instrument (charge on the underlying property) against of non payment of rental
3.	Legal risk	Enforceability of contract and recognition of beneficial ownership under the law	Acquisition of property by the bank and customer	-Ensure comprehensive agreement to cover rights and obligation under joint ownership -Proper assessment of customer credit profile and valuation of the property
4.	Market risk	Arising from fluctuation of market price (in the case of transaction without <i>wa'd</i>)	Lease rental and transfer of bank's ownership	Pre-agreed rental price based on financial market indicator

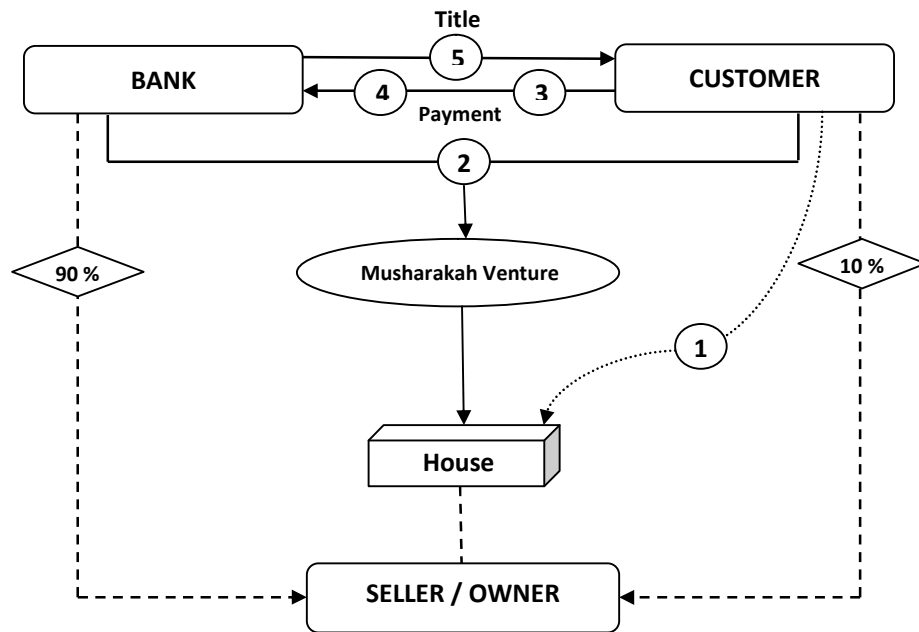
Source: IFSB, IRTI & IDB, Report on Islamic Finance and Global Financial Stability, April 2010.

5.6 MM HOME FINANCING IN MALAYSIA

MM also known as diminishing partnership is a new mode of Islamic home financing offered by Islamic banks in Malaysia. MM becomes an alternative to BBA/*bay' al-inah* as the latter is not well accepted by other regions such as the Middle Eastern countries. Furthermore, since Malaysia is becoming the preferred international Islamic financial centre through MIFC (Malaysia International Islamic Financial Centre), the implementation of an alternative concept of financing is central to facilitate the initiative (Samsudin, 2008: 6).

As discussed earlier, MM is a combination of two or three distinctive contracts namely contract of partnership and contract of *ijarah* or lease and sale contract. To reiterate the process, the customer will first enter into a partnership agreement with the bank to own the house. Under this situation the customer will normally pay 10% as the initial share to enable him/herself to be a co-owner of the house. The remaining balances of 90% will normally be provided by the bank. The customer will then gradually redeem the financier's 90% share by paying certain agreed portion to the financier until he/she become the sole owner of the house.

The process of redemption takes place when the financier will charge a certain rent on the basis of lease contract to the customer. The periodic rental amounts will be jointly shared between the customer and the bank according to the percentage share holding at the particular time which keeps changing as the customer redeems the financier's share. Hence, the financier's share would decrease and the customer's share ratio would increase after each rental payment due to the periodic redemption until it is eventually owned by the customer (Meera and Razak, 2005: 8; Rahman, 2010: 37; Smolo and Hassan, 2011: 243-244). This product is deemed to be a more appropriate contract for home financing. Although MM is relatively new in the Malaysian financial market, its application is regarded of having high potential to overcome problems in BBA/ *bay' al-inah* contract (Meera and Razak, 2005).

Figure 5.2: The Structure of MM Home Financing

Source: Haneef *et al.* (2011)

1. Customer identifies the property; sign Sales and Purchase (S&P) agreement; pays deposit; and applies for financing
2. Bank, once application is approved, enters into a *Musharakah* Arrangement with customer.
3. Customer leases the bank's share in the house.
4. Customer will pay an amount in addition to the rental to buy the Bank's units in the property.
5. The partnership will be terminated with the customer owning 100% of the house; the title will be transferred to him/her.

In addition, normal lease is used to facilitate the completed properties, whereas for the properties which are under construction, forward lease will take place (Ka, 2009). Forward lease means a lease (*ijarah*) contract which is executed for an asset undertaken by the lessor to be delivered to the lease according to certain specifications, even if the asset is not yet owned by the lessor. Therefore, at the time when the leased property is under construction, the lessor may ask the lessee to pay certain portion of pre agreed lease rental as a forward lease. The forward lease rental payment will then be regarded as a debt to the lessor until the date delivery of the leased property to the lessee (Securities Commission of Malaysia, 2008).

As such, the use of profit and loss sharing mode in Islamic home financing is hoped to overcome most of issues related to BBA/ *bay' al-inah*. To date, home financing based on MM is actively offered by 6 Islamic banks in Malaysia. In addition, it is interesting to note that 4 out of these 6 Islamic banks are foreign, namely Kuwait Finance House Malaysia Berhad; OCBC al Amin Malaysia Berhad; HSBC *Amanah* Malaysia Berhad; and RHB Islamic Bank Berhad.

5.6.1 Legitimacy of MM Home Financing

The discussion on legitimacy of MM as a mode of financing can be found from several *Shari'ah* principles, which can be summarized as follows (Thani *et al.*, 2003: 56; Smolo and Hassan, 2011: 241):

- a. Based on unanimous agreement by a majority of the Muslim jurists who agreed that MM can be applied based on the principle of *al-masalih al-mursalah* or *al-istislah* or public interest.
- b. Based on Islamic legal maxim where, there is nothing in the primary sources of *Shari'ah* that prohibit the conduct according to the concept of the partnership. Since there is no clear prohibition disallowing this concept, it is, therefore, deemed as permissible based on several legal maxims namely 'what is not prohibited, is permissible'; 'the initial state of things is permissible unless it is clearly prohibited'; and 'there can be no danger nor any endangerment'.
- c. Based on the principle of interest-free and *gharar*-free transaction, where the concept of partnership does not contravene any principle of *Shari'ah* and more importantly it does not involve any practice of *riba* and *gharar* in its contract.
- d. Based on *fatwa* issued by the First Conference of Islamic Banks (Dubai, 1979), on the permissibility of MM. In addition, the International *Fiqh* Academy of OIC (2004) in its 15th session made a resolution that MM is a valid contract and in Malaysia particularly, there is also resolution by the *Shari'ah* Advisory Council of Central bank of Malaysia in its 56th meeting that decided on the permissibility of MM contract (Osman and Abdullah, 2010: 277).

5.6.2 Governing Law of MM

Generally, the main legal framework of Islamic banking transaction in Malaysia is the Islamic Banking Act 1983. It was originally modelled according to the Banking Act 1973 which is the statutory law that governs the transaction of conventional banking in Malaysia. However, there is no significant difference in terms of the contents of the Islamic Banking Act with the Banking Act, except the former specifies under Section 2, that Islamic banking business as a “business whose aims and operations do not involve any element which is not approved by the Religion of Islam”. The act, however, does not set out the details of the commercial transactions allowed in *Shari’ah*. Besides, there is also a Partnership Act 1961, which governed the partnership contract, however, MM does not fall within the definition under this act as it only governs the relationships between the persons carrying business in common with a view of profit.

In addition, the Islamic Banking Act remains as only regulatory without specifying any statement of substantive law to be applied in cases of dispute. The situation deteriorates when the case of Islamic banking is dealt and tried in the civil court by the civil judges using the civil laws. Therefore, there is a real challenge for the practitioner in Islamic banking system when preparing legal documentation for Islamic banking contracts particularly in this case MM contract. They have to ensure that the documentation must be *Shari’ah* compliant as well as being in accord with other civil laws, such as Contracts Act 1950, National Land Code and Bill of Exchange 1949, which are Malaysian laws generally. Moreover, all the documentations must also been structured in such way as to be enforceable in the civil courts particularly when there is a dispute arises in the future (Thani *et al.*, 2003: 91; Smolo and Hassan, 2011: 247).

This situation, may to a certain extent, cause inconvenience particularly when the Islamic banking case is brought to the civil courts, where it suggests that the existing law is inadequate to govern the application of the Islamic contracts. The problem of legal framework that governs the Islamic Financial transactions indeed exists in most of the countries which were existing conventional banking system alongside the Islamic banking system.

This is further supported by Ahmad and Hassan (2009:317) and Askari *et al.* (2009: 53) who discuss the issues and challenges of Islamic finance and highlight the inadequate or

nonexistent legal framework for regulation in Islamic finance at the national level in many developing countries. Wilson (2002: 208) argues that they are indeed a different Islamic structure as compared to conventional financial instruments which requires consideration, or perhaps a different treatment to be given to legal issues such as owner liability, the consequences of default and the treatment in the event of loss or destruction of the assets.

This problem is regarded one of the legal risks posed by the Islamic banks. The impacts of legal risk on Islamic banks are significant and cannot be neglected, which may arise from uncertainty of laws, the lack of a reliable legal system to enforce financial contracts, the legality of financial instruments, lack of availability of legal experts and exposure to unanticipated changes in laws and regulations. Furthermore, it is argued that some operational aspects of Islamic banking activities are not adequately covered by laws and would result in the exposure of legal risk to Islamic banks. This is because most Islamic banks operate within similar legal and business environments with their conventional counterpart. In addition, a number of inevitable separate contracts in Islamic banking products could contribute to additional legal risks (Izhar, 2010:14).

5.6.3 *Shari'ah*, Legal and Operational Issues in MM

As MM contract is a newly implemented product of Islamic mortgage, there are several important issues discussed in literature particularly relating to *Shari'ah*, legal and the operational aspects.

5.6.3.1 Two/More Agreements in One Contract

Unlike BBA/*bay' al-inah*, scholars in Middle Eastern Countries are in consensus regarding the *Shari'ah* permissibility of the MM contract (Bendjilali and Khan, 1995). Generally, it is perceived as having two or more sales in one sale contract, which is not in accordance with *Shari'ah*. However, it is permitted as long as both contracts are concluded separately and not clearly mixed between each other and also it is permissible to impose a pledge on the share owned by the customer, because the right of beneficial ownership is recognised by *Shari'ah* (ISRA, 2008; Smolo and Hassan, 2011: 249).

Therefore, under the purview of the same rule, *Ka* (2009) explains that in the event of a refinancing for MM, the previous contract of financing must be terminated for the new financing to take place. This is to ensure that there will be no two contracts in one contract.

Consequently, there will be a discharge of charge by the originating bank, as part of the legal requirements in Malaysia.

5.6.3.2 Legal Charge and Trust

This legal issue is related to the way how the bank obtained security from the customer in the case of MM home financing. Generally, Wilson (2002: 210) points out that Islamic banks can accept securities for leasing and *murabahah* contracts, and may resort to national secular court within secular commercial and contract law, to ensure their rights over securities are enforced in the event of default or payment failure. Providing securities to the financiers can be done in various methods, for instance, by way of personal guarantee, real estate or property, and the assignment of funds relating to supply contracts.

As regard to MM home financing, Haneef *et al.* (2011) and Ka (2009) have highlighted that there are two methods of securing banks' interest as required by National Land Code:

i. By way of legal charge (registered under section 243)

In this case, the land is registered under the customer's name as legal owner and trustee for the bank. Both parties who are beneficiaries agree that the customer as trustee, should register a charge over the whole land in favour of the bank. Although it appears that the bank as a co-owner of the land is only entitled to partial interest over the land, the NLC only allows a charge over the whole, but not a part of the land.

ii. By way of legal trust

The practice of legal trust in securing MM home financing in Malaysia is applicable only to Kuwait Finance House (KFH). In this situation, KFH is registered as the legal owner and holds the property on trust for itself and the customer. Thus, the customer becomes the co-beneficial owner of the property. The trust deed is executed and registered under section 344 of the NLC.

In responding to this issue, Ka (2009) raises his concern by arguing that the charge is on the entire property although the partial refinancing not indicating the market price of the entire property. The proper way to deal with this case is that the charge should be on a slice of property being partially refinanced, and not on the entire portion.

Based on the strict application of *Shari'ah*, no security via legal charge can be arranged in MM transactions since it cannot have a guarantee attached to the financing. Although the Central Banks of Malaysia via its Law Review committee has reviewed this issue, until present, there is no amendment of relevant legislation involved.

This practice, however, remains the most prevailing choice for all the Islamic banks offering MM home financing product except KFH. Moreover, Ka (2009) argues that such a practice may trigger some legal concerns. In the absence of precedents and legal provisions governing this arrangement, the customer may challenge the bank's rights in court when the bank wishes to exercise its rights under the trust deed, particularly in Malaysia where the notion of trust is not fully developed. MM home financing in Malaysia is also not entirely free from legal flaw, particularly in term of its juridical compliance (Hasan, 2011:1; Smolo and Hassan, 2011: 247). However, while referring to several case law authorities held by the court in earlier cases (not the case of MM), Haneef *et al.* (2011) argue that the practice of charge or trust is legally sound and would be upheld in the court of law and hence, could be legally used for the implementation of MM home financing in Malaysia.

5.6.3.3 Ownership, Maintenance and Takaful

Taib *et al.* (2008: 236) argue that the use of MM in home financing will also force the bank of bearing an ownership risk and progressively pass the ownership to the customers. Having ownership over the asset is indeed very pivotal, as it represents the extent of rights and liabilities between the contracting parties. As the ownership is attached with responsibility, the bank should also be involved in purchasing, maintaining and bearing all costs associated with the asset. This situation will deviate the bank from its traditional role as financial intermediary (Khan, 1995).

As a consequence, any leasing contract that exempt the bank from these rights and duties may render it similar to financial leasing and is regarded as inadmissible from *Shari'ah* perspectives. However, in practise, the banks would try to avoid as much as possible any ownership which associated with greater risks, liabilities and duties. This can be seen when the bank becomes the only beneficial owner of the property and retains the right to repossess

over the property in the case of the customer violates the contract (Tag El-din and Abdullah, 2007).

Furthermore, regarding the issue of ownership of the property, the bank shares the responsibility and risks arising from the said property. Generally, the lessor has to bear the cost of basic and structural maintenance, while the lessee shall bear the routine and operational maintenance. Nevertheless, since the customer's ultimate intention of having a mortgage is to own the property, and not merely to rent at certain period of time, it has been argued that he should bear all the costs. Furthermore, the customer's name is registered as a legal owner in the document of title, whereas the bank only serves as a beneficial owner of the asset that has ownership claims over the asset until all shares are redeemed by the customer (Tag El-din and Abdullah, 2007: 231; Smolo and Hassan, 2011: 249).

Therefore, by referring to the concept of partnership, Ka (2009) further raises his concern whether MM documentations have completely fulfilled the spirit of *Shari'ah*. He questions the validity of MM in respect of taxes payment and stamp duty. He indicates that based on a perusal of a sample of MM co-ownership agreement specifically on the clause on payment of taxes and outgoings, despite the customer being the partial owner of the property until the end of the co-ownership, he shall pay 100 percent of the amount of all taxes related to the property.

Ka (2009) further highlights that an unequal bargain position further exists in the case of stamp duty and taxes payment where the customer shall be made responsible to pay all the related expenses. Besides, the amount of the *takaful* coverage must always be higher than the outstanding price of shares held by the bank. The situation deteriorates when the customer has to continuously assign all rights to the *takaful* proceeds to the bank. The customer is further encouraged to take up a *Shari'ah* compliant mortgage reducing term *takaful*. The indemnity clause available in the agreements may render to some form of guarantee or assurance by one partner to another.

5.6.3.4 Wa'd Issue

According to *Shari'ah*, *wa'd* means a promise which connotes an expression of willingness of a person or a group of persons on a particular matter. In a contemporary Islamic banking, the application of *wa'd* is extended to financing and investment facilities whose structures are

based on sale, leasing and partnership contracts. The use of *wa'd* in these facilities is proven to be an effective tool for structuring innovative Islamic financial products and served as a risk mitigation tool to avoid any financial loss against the bank and show the parties commitment to perform their contract as mutually intended (Abdullah, 2009; Dar, 2010).

In fact, the permissibility of *wa'd* is recognised by contemporary juristic opinions particularly Resolution No 40-41 of the Council of Islamic *Fiqh* Academy which provides that *wa'd* becomes legally binding if it is made conditional upon the fulfilment of an obligation, and the promise has already incurred expense on the basis of such a promise. Therefore, when a promise has the binding effect, it means that such a promise must be fulfilled, and any act which amounts to unjustifiable non-fulfilment of the promise will render the payment of damages. In the Malaysian context, the concept of promise and promissory estoppels are duly recognised under Contracts Act 1950, and thus, are legally enforceable before the court of law (Abdullah, 2008).

Ka (2009) and Naim (2011) highlight that the application of *wa'd* in MM contract is usually ingrained in two forms. Firstly, the customer undertakes to pay the monthly payment until the end of the partnership and the title of equity is completely transferred to him. Secondly, the customer irrevocably undertakes to purchase the bank's share in the event of default. By virtue of the *wa'd*, the customer shall be obliged to acquire the bank's ownership share in the property at certain amount when there are changes in circumstances resulting in irregularity, although it is not caused by the customer.

Hence, this practice, to a certain extent, could violate the unique feature of *musharakah* contract, as the practice of *wa'd* may serve as a capital guarantee structure because the arrangement is made for the bank to recover the full amount of the property auctioned. Furthermore, since the bank avoids ownership risk derived from the *musharakah* contract and escape from *musharakah* liability, it may seem oppressive on part of the customers, by putting unnecessary burden on them. This contradicts the essence of *musharakah* contracts where the partners face equal rights and liabilities (Naim, 2011: 44).

5.6.3.5 Rental Rate issue

The issue of rental is very crucial as its utilisation in MM home financing could replace the use of interest rate as a benchmark. In line with this issue, Taib *et al.* (2008: 236) and Smolo

and Hassan (2011:249) argue that the use of MM in home financing is indeed capable of overcoming the utilization of interest rate as a benchmark through the use of rental income. Meera and Razak (2005) further highlight that the rental is most appropriate to be used in Islamic finance because the measurement is based from the true usufruct of the asset. Unlike interest rate which is similar to all kind of assets, the rental rate may differ among houses within a same row of houses or among different floors within a same condominium building. Therefore, the usage of actual rental value of property as an alternative to interest rate would reflect the real property value in the market.

However, MM contract is also exposed to the problem in determining the rental rate as it will cause an additional cost on part of the bank and the customer (Meera and Razak, 2005; Mohd Nor, 2008). To overcome this problem, Meera and Razak (2005) suggest that some of operators may use the services of independent real estate agents to provide them with the estimates. The banks may also use average of as many as three agents' estimates in order to be more just. They further suggested for the use of rental indices or house price indices in order to estimate the new rentals without having to bear the cost of using the service of real estate agents. Nevertheless, using the indices would cause the loss of some accuracy of the rental.

As regard to time of fixation of rental, it is also worth mentioning that Usmani (2004) opines that rental must be determined at the time of contract for the whole period of lease. He further provides that it is permissible to fix a different amount of rent for different phases during the lease period, provided that the amount of rent for each phase is specifically agreed upon at the time of the lease. However, if the rent for the subsequent phase of the lease period has not been determined or has been left at the option of the lessor, the lease is invalid. This view is clearly supported by Al-Zuhaili (2007) when he argues that in order to be a valid contract of sale, the price of the subject matter must be known by the parties. Consequently, the parties cannot agree to the contract which the price of the subject matter is yet to be specified. Hence, the fixing of a subsequent rental must carefully be done without prejudice the validity of the lease contract, and the interest of the lessee that may find himself locked in financial burden with a new rent.

5.6.3.6 Varying Property Value Issue

Since MM itself is a contract of partnership between the financier and the customer whereby the parties co-own an asset and share its rental income, they should also share the asset's price appreciation if any. Therefore, it further triggers the issue of varying property value for the leased asset. In expressing their opinion of not favouring the practice of valuation of the property during the contract tenor, Meera and Razak (2005) emphasize that an asset should be valued only when there is a sale of property which would involve the full transfer of ownership. Otherwise, the appreciation or depreciation of value would only be on paper. Therefore, at the end of MM when the partnership contract expires, the customer would get the full ownership of the asset, including any appreciation associated with the asset during that time (Meera and Razak, 2005).

Moreover, with regard to redemption, defaults and termination of contract, a revaluation decision would depend on the situations. The property needs not be revalued if the customer does not intend to leave the house as the redemption amount would be the same as the outstanding balance. The property would be re-valued when the customer intends to leave the house, and in cases of default and termination of contract as this would result in the sale of the property. The residual amount will be shared between the customer and the bank after deducting all outstanding arrears, liquidation costs including legal cost and the like based on the prevailing profit sharing ratio (Meera and Razak, 2005).

5.6.3.7 Price issue

Unlike BBA, which is fixed rate and constant throughout the entire tenor, banks which implement MM home financing are capable of managing the liquidity risks as rental payments can be adjusted at the end of each subcontract period. Even compared with floating rate BBA/*bay'al-inah*, MM still differs in the balance of financing at any point of time before the end of the contract. More importantly, the balance can never be larger than the financing amount of the house (Meera and Razak 2005; 2009). Therefore, it appears that the price of Islamic mortgage based on the instrument of MM will be as competitive as conventional mortgage, and more importantly cheaper compared to BBA/*bay'al-inah* (Smolo and Hassan, 2011: 245).

Furthermore, Meera and Razak (2005) argue that with the flexible structure attached to this financing, the customer will be able to own the property earlier by redeeming faster the

principal sum of the banks. In addition, since the contract is based on the profit and loss sharing concept, it will be able to take care the well being of the society as a whole and promote the welfare and interests and take care of the well being of the society as a whole which is in line with true spirit of Islamic banking (Ahmad, 2000; Rosly and Bakar, 2003; Taib *et al*, 2008).

5.6.3.8 Events of Default

A discussion on the event of default is necessary to identify whether there is a different approach between equity-based financing and debt-based financing in the case of default. According to Haneef *et al.* (2011), this issue becomes controversial as in the presence of *wa'd* because the customer is obliged to acquire the bank's remaining share, which indirectly creates indebtedness on part of the customer. Ka (2009) further argues that the event of default creates a debt to be paid by the customer to the bank, even in the cases which are not the fault of the customer such as developer's winding up and the housing projects are abandoned by the developers. Therefore, this practise is similar to the conventional counterpart whereby the customer will continue to make payments if the property is destroyed until the insurance proceeds are received. Hence, the spirit of sharing in the contract of partnership is questioned.

On the other hand, in the event where there is no *wa'd* procured from the customer, Haneef *et al*, 2011 highlight that the process will be different as the underlying asset or the house will be sold in the market and the proceeds will be shared between the partners in accordance with their latest ownership share ratio. This practice seems to be close to the spirit of partnership, but until present, banks have complete freedom either to utilise *wa'd* or not in their MM.

Therefore, despite the potential of MM in overcoming the issues dotted in BBA, in practise, the structuring of MM documentations deserves a careful observation to ensure the validity of MM contracts in lights of *Shari'ah* and legal requirements. Such validity does not only limit to the permissibility of its contract *per se*, but include its discreet use and properly non defective structuring. In the absence of a proper circumspection, the perception of MM will remain no different from BBA and the conventional home financing.

5.7 CONCLUSION

This chapter has highlighted the concept of profit and loss sharing contract in Islamic jurisprudence. Existing literature suggests that profit and loss sharing modes as the most desirable contracts in Islamic banking. However, in reality, there are numerous issues associated with the implementation of equity-based contracts, which ultimately make such contracts remain marginal in the Islamic banking and finance market. Although the use of MM home financing in Malaysia is better compared to BBA home financing in terms of its *Shari'ah* acceptability, there are still legal, *Shari'ah* and operational issues surrounding its operation. Hence, the implementation of MM home financing in Malaysia is not free from challenges, and there are rooms for improvement in order to achieve of *Shari'ah* goal of justice and fairness that benefit the society.

Furthermore, with the aim of developing a better understanding on these issues, Chapter 7 aims to further elaborate issues with the data collected with the interviewees who are active players in the implementation of MM home financing in Malaysia. This is expected to clarify the state of current practice of this instrument of home financing, where the question of how and why are explored. However, prior to that, it is essential to explain the research methodology and research methods used in this study as part of the operationalisation of the research, which is presented in Chapter 6.

CHAPTER 6

RESEARCH METHODOLOGY

6.1 INTRODUCTION

This chapter describes the research process for the collection of primary and secondary data. The discussion embraces the main issues such as the methodology, design, strategy, methods and data collection process and analysis.

Since this research is about Islamic finance, it should be considered within the applied social research. The importance of social research cannot be over emphasized. As mentioned by Kumar (2002: 9), a systematic knowledge in social research will contribute to an adequate and successful social planning. Furthermore, social research has a direct implication on the social welfare, whereby the social researchers analyse the problem in the comprehensive context, and offer appropriate solutions. Therefore, social research plays a crucial role in providing solutions to problems and better suggestion for the previous practice/knowledge through an understanding of the root causes of problems under present condition.

This research is significant in providing knowledge and understanding on what, how and why MM home financing instrument is implemented in Malaysia by gathering primary data on its challenges and prospects from demand as well as supply sides. Such resources can become a good platform for the better implementation of Islamic mortgage product in particular, not only in realizing the profits, but in accordance with the spirit of *Shari'ah* that benefits the society as a whole.

6.2 OPERATIONALISATION OF THE RESEARCH: HYPOTHESES DEVELOPMENT

Since the main objective of this study is to explore the level of awareness, perception and expectation of the respondents towards Islamic mortgage, the researcher has identified several characteristics that are unique in nature to Islamic mortgage. Following that, a well-formulated questionnaire needed to be developed in order to facilitate the respondents to provide answers which could be analysed by the researcher accordingly.

The selection of the variables was identified based on various sources from different perspectives that are related to the research area in question. This research intends to gauge in a holistic manner not only the perception and awareness of the respondents towards Islamic mortgage products, but also to examine, to a certain extent, their expectation towards Islamic mortgage which is paramount and makes Islamic mortgage distinct from the conventional counterpart. In operationalising the research questions, the following hypotheses were developed according to the research question:

Hypothesis 1(i): The majority of the respondents who opt to Islamic mortgage do have fair level of awareness on the Islamic mortgage product based on BBA contract.

Hypothesis 1(ii): The majority of the respondents who opt to Islamic mortgage do have low level of awareness on the Islamic mortgage product based on MM contract.

Hypothesis 1(iii): The majority of the respondents who opt to Islamic mortgage do have low level of awareness on the Islamic mortgage product based on istisna' contract.

Hypothesis 2: The majority of the respondents apply equal importance to the 'religious factor' along with other criteria as their reason for using Islamic mortgage.

Hypothesis 3: The majority of the respondents apply equal importance to the price factor in which, Islamic mortgage is more expensive compared to conventional mortgage, along with other criteria as their reason for not using Islamic mortgage.

Hypothesis 4: The majority of the respondents do make comparison in deciding the best deal for choosing their mortgages.

Hypothesis 5: The majority of respondents apply equal importance to the 'amount of monthly repayments' factor along with other criteria in deciding the best deal for their mortgages.

Hypothesis 6: The majority of the respondents perceive 'Islamic mortgage is more expensive compared to conventional mortgage' after making comparison on both.

Hypothesis 7: The majority of the respondents are satisfied with their mortgages chosen.

Hypothesis 8: The majority of the respondents apply equal importance to the 'fixed monthly repayment' factor, along with other reasons contributing to their satisfaction on the mortgages chosen.

Hypothesis 9: The majority of the respondents apply equal importance to the 'expensive monthly repayment' factor, along with other reasons contributing to non satisfaction on mortgage chosen.

Hypothesis 10: The majority of the respondents apply equal importance to a factor on the capability of Islamic mortgage in safeguarding the customers' interests, along with other expectations' factors on Islamic mortgages.

6.3 RESEARCH METHODOLOGY

In principle, research methodology and research method are two distinct things. The former connotes wider scope than the latter, where it can be defined as a way to systematically solve the research problems or a science of studying how research is conducted scientifically. Therefore, in research methodology, the study includes various steps which are generally adopted by the researchers in studying the research problems along with the logic behind them (Kumar, 2008: 4).

In this relation, the researcher must know not only the research method techniques but also includes its methodology. Thus, researchers not only need to know how to develop certain tools and to apply particular research techniques, but they also need to know which of the methods or techniques are relevant, and what would they mean and indicate and why. Researcher needs to know the criteria by which they can decide on certain problems and others will not (Kumar, 2008:5).

Research methodology has many dimensions and research methods do constitute a part of research methodology. Therefore, the discussion on research methodology will not only include research methods, but also consider the logic behind the methods used and explain why it is important in adopting particular methods or techniques.

The research methodology classification which is based on the approaches to inquiry or the process taken to find answers to the research questions is divided into two major types of research which are:

Qualitative research is a research strategy that usually emphasizes words rather than quantification in the collection and analysis of data (Bryman, 2008: 366). It is concerned with a qualitative phenomenon, which relate to or involve quality or kind (Kumar, 2008: 8). Therefore, it explores processes rather than outcomes and focuses on the meaning of experiences by exploring how people define, describe and metaphorically make sense of these experiences. Since the goal is to understand in depth the viewpoint of a research participant, thus make it purpose to be more descriptive rather than predictive (Vanderstoep and Johnston, 2009: 163).

On the contrary, quantitative research is based on the measurement of quantity or amount (Kumar, 2008: 8) and often described as entailing the collection of numerical data as exhibiting a view of the relationship between theory and research as a deductive relationship (Bryman, 2008: 140). The analysis of data subjects variables to frequency distributions, cross-tabulations or other statistical procedures. Whilst the organisation in the communication of findings is more analytical in nature and it makes inferences and conclusions for example by means of testing the magnitude and strength of a relationship between variables.

For the purpose of this study, qualitative research methodology is adopted as it involved measuring and developing an understanding on the subject matter through people's attitudes, opinions and perceptions on Islamic mortgage in Malaysia, and also it aims to explore subject and the field. In this relation, the opinions from the stakeholders, which includes the bankers, *Shari'ah* scholar, economists and legal experts are sought to represent the supply side views on the challenges in implementation of MM, while the perceptions and expectations on Islamic home financing as a whole is also obtained from the customers who represents the demand side of the IBF market.

6.4 RESEARCH DESIGN

According to Creswell *et al.* (2003: 211), research design can be defined as a procedure for collecting, analysing and reporting research. Therefore, a research design entails a framework for the collection and analysis of data whereby its choice reflects decision about the priority being given to a range of dimensions of the research process (Bryman, 2008: 31). The function of a research design is to ensure that the evidence obtained enables the researchers to answer the initial question as explicitly as possible. Obtaining relevant evidence entails specifying the type of evidence needed to answer the research question, test a theory, evaluate a programme or accurately describe a phenomenon. In other words, when designing research, researchers need to ask: given this research question or theory, what type of evidence is needed to answer the question or test the theory in a convincing way.

Thus, in order to answer these questions while conducting a research, there are several types of research design in social research which normally falls under category of non-experimental research that can be considered by the researchers which include survey research, exploratory research, descriptive research, case research, action research, and ethnography. For the purpose of this discussion, only the related types of research design to this study are discussed below:

6.4.1 Survey Research

Survey research is one of the most important areas of measurement in applied social research. In a wider sense, survey means to view comprehensively and in detail. The broad area of survey research encompasses any measurement procedures that involve asking questions to respondents. Surveys come in a wide variety of forms, and are used by researchers who can have very different aims and discipline backgrounds. In general, a systematic survey can be anything from a short paper-and-pencil feedback form to an intensive one-to-one in-depth interview. In particular it includes questionnaires, face-to-face interviews, telephone interviews, documents and observation (Denscombe, 2005: 7).

6.4.2 Exploratory Research

Wrenn *et al.* (2007: 34) compare exploratory research as akin to detective work whereby the researcher searches for the clues to reveal what happened or currently take place by using a variety of sources necessary to provide information. The researcher/detective ‘follows where his or her nose leads’ in the search of ideas, insights and clarifications.

Thus, exploratory research also very helpful to initiate a study because it helps the researcher to understand what and why of all aspects of a problem or subject. On the other hand, descriptive research normally emphasises the ‘what’ aspects only. In fact there are various types of exploratory research which include searches of literature, interview, and case studies (Hester, 1996:36).

6.4.3 Case Research

Simons (2009: 3) explains that a case study research is a study of a singular case that is particular and unique. A case study focuses on one instance of a particular phenomenon with a view to providing an in-depth account of events, relationships, experiences or processes occurring in that particular instance (Denscombe, 2005:32). Thus, a case study entails a detailed and an intensive analysis of a single case (Bryman, 2008:52).

A regard to this study, it is constructed as a case study with exploratory orientation by using survey design. Exploratory research is chosen, because this study aims to find out why and how the implementation of MM as an alternative Islamic home financing has been recently applied in Malaysia. In addition, the use of questionnaires to obtain the customers’ opinions and perceptions of Islamic home financing and face to face interviews with industry players are employed, and therefore, this categorises this study as a survey research. Furthermore, having the study to explore the subject matter in the case of Malaysia makes it a case study.

6.5 RESEARCH STRATEGY

In social research, the connection between theory and research leads to two distinctive clusters of research strategy namely inductive and deductive (Bryman, 2008:22). In other words, each strategy has connections with particular philosophical and theoretical traditions.

Indeed, inductive research strategy is more open ended and exploratory in nature, particularly at the beginning while deductive strategy is narrow in nature and is more concerned on testing theories and confirming hypotheses. Sekaran (2003:27) further mentions that it is also possible for the same research to use the mixed processes of deduction and inductive.

Inductive research strategy aims to establish descriptions of characteristic and patterns through the realities of the field or the social reality. Thus, it starts with the collection of data on particular characteristics and later produces descriptions. Then it relates these descriptions to the research questions. It ends up by developing some general conclusions or theories (Blaikie, 2010:83).

On the other hand, deductive research strategy aims to test theories, eliminate the false one and corroborate the survivor. It starts with identifying the regularity that needs to be explained, and later it constructs a theory and deduces hypotheses. This strategy ends when it tests the hypotheses by matching them with data explanation in that context (Blaikie, 2010: 83).

Applying the strategy to this study, which collect the data from the field to assess a general pattern before reaching a conclusion, and answer the research questions has predominantly, emphasised an inductive approach. In particular, the questionnaire survey was conducted to measure the respondents' perceptions and expectations of Islamic mortgage. The interviews were conducted with various personnel involved directly in the implementation of MM in Malaysia to examine the challenges of its implementation. This strategy should, therefore, be considered to be 'exploratory', as it starts with collecting material from the fieldwork through survey questionnaires and interviews to generate hypotheses.

6.6 RESEARCH METHOD

Research method can be defined as a technique for collecting data that involve a specific instrument, such as self-completion questionnaire, a structured interview schedule, or participant observation (Bryman, 2008: 31). Therefore, these methods adopted by researchers in performing the research operations during the course of studying research problems (Kumar, 2008:4).

In doing so, the research techniques employed must be appropriate for the questions to be answered or research questions that entail the selection of methods to be employed. They must be based on the required information, from whom and under what circumstances. In addition, the choice of research methods will also reflect some practical considerations related to time, resources and access to the sources of data (Denscombe, 2005:131) but, they must be consistent with research methodology, design and strategy.

There are two broad categories of the common used by social science researchers. Quantitative method is most often used when the motives for research are explanatory, descriptive or evaluative. Data that are treated as quantitative can either be in numbers or attributes which can be ordered in terms of magnitude for example, people's attitude and behavior (Schutt, 2001). The main research method associated with quantitative research is surveys. Surveys gather data at a particular point in time and vary in their levels of complexity from providing simple frequency counts to that which present a relational analysis.

Qualitative method is most often used when the motive is exploration. Data that are treated as qualitative are mainly those which are written or spoken words or observations which do not have direct numerical interpretations. The main research methods associated with qualitative research are participant observation, qualitative interviewing, focus groups, language-based approaches to the collection of data such as conversation analysis and the collection and qualitative analysis of texts and documents (Bryman, 2008).

Furthermore, there is also an approach of using two or more methods in combination which is called *triangulation*. In social science research, triangulation is defined as the mixing of data or methods so that diverse viewpoints or standpoints cast light upon the investigated subject (Creswell, 2003). The aim is to corroborate one set of findings with another. As such, it can help researchers to reduce the risk of a researcher's conclusions based on the limited or specific method. This happens when the researcher adopts different types of data on the same topic, which allow him to view things from different perspectives and understand the topic in a more rounded and complete fashion than would be the case had the data been drawn from just one method (Denscombe, 2008:132). Along this line, Robson (2002:174) emphasis that

the use of mixed methods will definitely increase the credibility of one's research as the use of multiple sources is capable of enhancing the rigidity of using single method in a research. In this current study, as part of the triangulation method, both the qualitative and quantitative methods are used. Quantitative method is through the questionnaire surveys and aims at assembling primary data to measure the respondents' view, attitudes, reasoning and behaviour on the topic of research namely Islamic mortgage in Malaysia. In addition, the qualitative method is through the semi-structured interviews with various relevant officials in the industry, in order to obtain some practical insights and experience on the implementation of MM home financing as an alternative to BBA home financing.

Triangulation method is chosen because the data would complement each other and enrich this research. Specifically, it links between the questionnaire and interview findings, as the qualitative method emphasis on supply side of the Islamic mortgage and the quantitative method emphasis on the demand side of the Islamic mortgage market. Therefore, by applying multiple methods would provide a more holistic understanding of the study as it retrieves and blends both the qualitative and quantitative elements. Most importantly, by combining both methods, the credibility and validity of the research outcomes would be further enhanced as single method is not universally accepted as the 'best' for all situations (Denscombe, 2005:132).

6.7 DATA COLLECTION

This section aims to detail the data collection process by focusing on various aspects of questionnaire and interviews.

6.7.1 Qualitative Method: Semi Structured Interview

Interview, as a primary data collection method, is deemed to be the most appropriate method if the researcher needs the data based on opinions, perceptions, experiences and feeling or if the required data is based on sensitive issues or involve privileged information. It is something more than just a conversation because it involves a set of assumptions and understandings about the situation which are not normally associated with a casual conversation (Denscombe: 2005: 163).

Like other methods, Denscombe (2005: 189) explains several advantages and disadvantages of interview as one of the research methods.

- i) The lists of advantages of interviews include capable of exploring on the issues or subjects of interest, thus make the discussions produce data in greater depth and detail;
- ii) Capable of having valuable insights based on the depth of the information gathered and the wisdom of the interviewee;
- iii) The equipment for the interview is simple, yet able to build conversation skills which the interviewer already has;
- iv) Plenty opportunity to develop the ideas and explain view which is regarded as important;
- v) Flexible in the sense that any adjustments to the interview questions can be easily made during the interview conducted;
- vi) Easy to check the accuracy and relevancy as there is a direct contact at the point of the interview; and
- vii) High response rate guaranteed since it is generally prearranged and scheduled for a convenient time and location.

On the contrary, the interviewer may have some disadvantages that may happen in certain situation.

- i) Since there is no standard responses, the interview data cannot easily be transcribed in such a longer time;
- ii) Consistency and objectivity is hard to be achieved as the data collected, to certain extent, may be unique for certain context and specific individuals;
- iii) Identity of the interviewee may affect the truth of the statements made by the interviewee;
- iv) The use of tape recorder will make the interviewee feel uncomfortable, thus make the interview become artificial situation; and

- v) The fact that interviewees are sometimes geographically widespread, it consumes interviewers' time for travelling.

Albeit disadvantages of using interview method, the advantages outweigh the disadvantages due to the fact that interview is seen to be one of the best methods of soliciting information on a specific topic from people with a speciality in the area of study.

6.7.1.1 Significance of Interviews for this Study

Since this study aims to identify the respondents' opinions about the issues pertaining to MM home financing in Malaysia from the top managements of various banks, legal experts, economists, as well as *Shari'ah* scholars who advise the banks on *fatwa* issues, it is essential that the opinions and perceptions of the stakeholders from supply side to be revealed.

Thus, the aim of the interview is to develop a clear insight of practices from these industry players who are involved directly in the implementation of MM home financing, information regarding the *Shari'ah* and legal issues of the MM home financing; governing law for the implementation of MM home financing; whether the existing law is exhaustive enough in governing MM home financing; problems faced by the banks in implementing MM home financing and customer acceptance and awareness on MM home financing. As the interviews involved the questions of what, how and why, the data collected are very useful in order to confirm the literature discussed in Chapter 5.

6.7.1.2 Interview Design

In preparing the interview, there are several necessary steps. The design of the interview must always be guided by its aims. Therefore, the first important step is to study the variables which are necessary for the construction of interview question or interview guide. These variables can be derived from and translated into the research questions. Then they would be translated into interview questions. The questions constructed were relevant to those to be interviewed. The questions were put into subsections to facilitate both the interviewer and interviewee in the interview process. Most of the questions are open-ended where the interviewees were given the flexibility to express their views freely, in accordance with their experience and knowledge. The interview questions are presented in the Appendix 1.

Apart from the questions guide, another important aspect to be considered was the position held by the potential interviewees taking into account their level of knowledge and experience that they might have. Generally, the higher the position of the respondent, the more detail and in depth information can be obtained. Therefore, in order to explore and understand the insight practices of MM home financing, the interviewees selected is based on their positions and knowledge, where most of them are the individuals who involved directly, starting from the idea to the implementation of MM home financing in Malaysia. To reiterate, the respondents whose are the bankers consists of head of *Shari'ah* and legal department, head of product development and vice president of Islamic banking product. For the *Shari'ah* advisor, they were selected among those who are responsible in advising the banks in implementing MM home financing. As for the legal experts, they were among of senior partners working in financial services who directly involved in drafting MM legal documentations where all of them belong to the very reputable legal firms in Malaysia. As for the Islamic economists, most of them are the professors who have involved in the debate around MM home financing. Finally, as for the regulators, the respondents are responsible in making the policy regarding IBF industry in Malaysia. The list of interviewees is presented in Appendix 3.

6.7.1.3 Types of Interviews

Generally, interviews can be grouped into 3; structured interview, semi-structured interview and unstructured interview. The main differences between them stem from the degree of control exercised by the interviewer over the nature of the responses and the length of the answers allowed by the interviewee (Denscombe, 2005: 167).

Structured interview involves a tight control over the format of the questions and answers. In other words, it more likely a questionnaire which is administered face to face with the interviewee in which he is invited to offer limited option responses, thus offering a relatively easy data analysis through the advantage of standardization of the answers. This type of interview is best suited in the collection of quantitative data (Denscombe, 2005:166).

On the other hand, in semi structured interview, the researcher has a list of questions or a fairly specific topic to be covered, often referred to as an interview guide, but the interviewee has a great deal of leeway in how to reply. Questions may not follow on exactly in the way

outlined on the schedule (Bryman, 2008:438). Thus, the answers are open-ended and there is more emphasis on the interviewee elaborating points of interest.

Unstructured interviews go further in the extent to which emphasis is placed on the interviewee's thought and opinion. In this situation, the interviewer just introduces the theme or topic and let the interviewee develops the ideas and thoughts.

For the purpose of this study, a semi structured-interview is adopted as it offers the flexibility in allowing the interviewee to develop ideas and speak more widely on the points of interest, whilst the interviewer still has a clear list of issues or interview guide to be addressed. This type of interview is the most appropriate to discover and explore perceptions, experiences and practices in the implementation of MM. Most importantly, interviews enable them to relate their perceptions with their position and experience.

6.7.1.4 Interview Sampling

Bryman (2008: 458) argues that most of the people choose purposive sampling for the interview. Purposive sampling is indeed a non-probability form of sampling. In doing so, the researcher does not search for the sample research respondents on a random basis. The objective of purposive sampling is to sample cases/respondents in a strategic way, so that those sampled are relevant to the research questions that are being posed (Bryman, 2008: 415).

Purposive sampling is deemed to be essentially strategic and it entails an attempt to create a good correspondence between research questions and sampling. Thus, the researcher will target to interview people who are capable of answering the research questions. In other words, the researcher samples are on the basis of wanting to interview people who are relevant to understand a social phenomenon related to the research questions.

For the purpose of this research, purposive sampling is chosen due to its characteristics and relevancy, as this research aimed at interviewing the right individuals who are familiar and took part in the debate related to MM home financing. 19 respondents were involved in this research. The wording of the interview guide is maintained as same among the respondents to ensure greater reliability. Should the interviewee require further clarification to the question,

the researcher tried to explain the intention of the interview questions. The sampling is purposely continuing until 19 respondents as it has been saturated in data and no new data is likely to emerge.

6.7.1.5 Interview Administration

As part of the interview process, in identifying the names of the officials, various methods were utilised: including internet search and also consulting the specialist individuals about potential names in Islamic housing finance at the particular institution. Only then, emails were sent or telephone calls were made either directly to the interviewees or through their secretary to make an appointment to interview them. Through email correspondence, an explanation for interview and its aim was given. An explanation was also given on the purpose of the study and the importance of the respondent's contribution towards the research. Besides, the interviewees were also informed about the expected length of the interview, taking into account the list of the interview questions. Then, one or two days before the interviews took place, reconfirmation of the date and time of interview was also made through the email or telephone call to ensure the smoothness of the plan.

The interviewees were also reminded that data are used only for the academic purpose and they were also assured of regarding the confidentiality of the information. Prior to the interview, the consent to use a voice recorder is required from the interviewees, so that the recording process would not interfere with interview and they would be more comfortable in expressing their views. As much as possible, each interview was made in an efficient professional manner and friendly environment, where the interviewee was also allowed to ask questions, if any.

The main rule in conducting an interview is that it should be focused on the subject matters discussed without any departure to it from either the interviewer or the interviewee unless they relate directly to the subject and are part of the searching the information. Therefore, while conducting the interview, this rule was adhered to as much as possible, in order to ensure the aim and intention of the interview questions are achieved. However, in some occasions, there were also interviewees who seemed to be interested in asking questions concerning life and experience of living and studying abroad particularly in the United Kingdom. With the intention not to make the interview to become very formal, these

questions were therefore answered in a polite manner without compromising the whole objectives of the interview.

In order to have a systematic way of interview, the questions were asked according to their priority, where general questions came first and followed by specific ones. Each question is also numbered to keep track and avoid repeating it. In the event there is any difficulty in understanding the questions, the researcher provided clarifications over the issue, either by rephrasing the questions or explaining the intention of the questions. Within one to two hours, the interview would end where at the end of each session a token of souvenir from Durham were given to the interviewee for the information given and time spent.

6.7.1.6 Potential Sources of Error

There are few factors that can be considered potential sources of error for interview data. These include interviewer's personal identity, involvement and self presentation.

Personal identity and presentation of the researcher namely sex, age, ethnic origins and occupational status will potentially affect the interview data. Due to the fact that the interviewer and interviewee have their own preferences and prejudices, they are likely to have impact on the chances of developing rapport and trust during the interview. Therefore, taking into consideration that all these attributes of the interviewer cannot be simply changed, but the effort to be polite, courtesy and punctual, receptive and neutral as well as to listen and learn rather than preach, can encourage the right climate for an interviewee to feel comfortable, and yet provide honest answers (Denscombe, 2005:171).

In addition, the interviewer needs also be aware that the interviewees understand the questions posed. Therefore, the questions must be clear and short, with no jargon that make the interviewee easy to understand. Furthermore, the interviewer needs to be balanced, in the sense that he or she cannot talk too much which may make the interviewee passive, or the interviewer cannot also talk too little which may result in the interviewee feeling that he or she is not talking along the rights lines (Bryman, 2008:445).

In applying all those important principles in this interview, the questions have been drafted in a short and simple to ensure the interviewees are able to comprehend and respond to the questions smoothly.

6.7.1.7 Validity and Reliability of Interviews

Kirk and Miller (1986:20) explains that reliability concerns with the degree to which the finding is independent of any accidental circumstances of the research, while validity is the degree to which the finding is interpreted in a correct way. They further emphasised that perfect reliability can be easily obtain without validity at all. However, perfect validity, on the other hand, would ensure perfect reliability, for each observation would contribute to the complete and exact truth.

Therefore, in order to ensure validity in the interview data, the most significant question to bear in mind is whether the interview questions asked measure what they claim to measure. In relation to this, an element of bias seems the main cause of invalidity of interview data. Thus, in order to achieve perfect validity and perfect reliability, the element of bias should be as far as possible be minimised in the process of the interview (Cohen *et al.*, 2005: 150).

Biasness in an interview can occur due to the characteristic of the interviewer, and the questions themselves. More specifically, the element of bias exists in these following situations (Cohen *et al.*, 2005: 150):

- a. The attitudes, opinions and expectations of the interviewer as well as his or her personal identity and personal presentation ;
- b. A tendency of the interviewer to perceive the interviewee in his or her own picture;
- c. An interviewer already has a preconceived notion (Bryman, 2008: 442), and try to seek the answer to support it;
- d. An interviewer's misperceptions and error in understanding on what the interviewee is saying; and
- e. The interviewee's mistake in understanding the questions that are being asked to him or her.

In addition, one way of controlling the reliability is to maintain the same word of questions, procedures, and have a similar recording and rapport to interviewee. In this situation, applying those principles and rules to this study, sufficient training on part of the interviewee might be useful to ensure the validity and reliability of the interview data. Having said that and paying high attentions to those matters, by having necessary training or practices and adequate preparation for the interview, the researcher as the interviewer in this study had as far as possible, tried to avoid these situations that could lead to the invalidity and unreliability of the interview data.

6.7.2 Quantitative Method: Questionnaire Survey

As a second research method, this research also employs a questionnaire survey as the second method to complement the interview data, specifically on the prospect of MM home financing in Malaysia. In other words, the opinion on the customers' acceptance on MM product has already been sought from the supply side of the IBF industry during the interviews, but again their perceptions and expectations of Islamic home financing were further searched through the questionnaire surveys so as to gauge the opinions and perceptions of the respondents with the objective of providing demand side findings to the research. This will help to complete the system in terms of having the demand and supply conditions in relations to the prospects of Islamic mortgage in general and MM in specific.

According to Collis and Hussey (2003: 173), questionnaire refers to a list of structured questions which are carefully chosen after considerable testing, with a view to obtain reliable responses from the chosen sample which the aim is to find out what a selected group of participants do, think and feel. Thus, Denscombe (2008: 145) explains that questionnaire for research is most appropriate under the circumstances:

- (i) when they involve a huge number of respondents;
- (ii) when what is required is just fairly brief, uncontroversial and straightforward information which consists of facts and opinions;
- (iii) when the social culture is open to allow complete and frank answer;
- (iv) when there is a need for consistent data from the same questions; and

- (v) when the respondents can likely be able to comprehend the questions and provide answers.

Sekaran (2003: 240) further emphasizes that the most common method to gather data on a specific problems and phenomenon particularly in social sciences is through questionnaire. Albeit its suitability of having questionnaire survey to these situations, it also worth mentioning that a questionnaire also has its own advantages and disadvantages.

The advantages include (Denscombe, 2008: 159):

- (i) efficient and cheap, yet produce huge amount of research data in an economical way;
- (ii) the arrangement of questionnaires do not require complicated action plan as they can simply be posted or sent without prior announcement to the respondents; and
- (iii) the style of questionnaire that exactly designed the same questions produce standardized and pre-coded answers with a very little chance being affected by interpersonal factors.

However, disadvantages of questionnaire survey would also include:

- (i) the respond rate sometimes are very poor and even the answers are rather incomplete;
- (ii) the trend of pre-coded answers can to certain extent become limited, yet cause bias to the findings towards the researcher's way of thinking rather than respondents' way of thinking; and
- (iii) the nature of questionnaire survey itself makes it quite difficult for the researcher to check the truth of the answers.

Despite these disadvantages mentioned, the use of questionnaire survey is significant to this study as it serves the best way to gather the opinions and perceptions of customers on Islamic home financing in Malaysia which represent the demand side of the industry. Moreover, with due care and attention to those principles, the advantages mentioned always outweigh the disadvantages of using it.

6.7.2.1 Significance of Questionnaire for this Study

The aim of the questionnaire is to find out general perceptions and expectations of Malaysian customers towards Islamic home financing in Malaysia. Since this study aims to examine customers' awareness of MM home financing as an alternative to BBA home financing in Malaysia, it is essential that the customers' opinions and perceptions regarding the demand side of the industry are revealed. In addition, data on customers' perceptions and expectation of Islamic home financing would also be significant in evaluating future prospect of MM home financing. Importantly, this study aims to establish a general pattern through the revealed perceptions and opinions, and questionnaire is considered as the most efficient method for delivering this.

6.7.2.2 Questionnaire Design

The design for the questionnaires can be divided into two distinct levels. The first is planning, while the second is drafting the questionnaires. The stage of planning the use of questionnaires can be regarded as a significant part as the chance to make amendments and corrections to the questionnaire once it has been printed and distributed is rather impossible.

As such, adequate and appropriate planning with the right balance of effort, rather than rushing to early into distributing the questionnaire will ensure it to get right at the first time (Denscombe, 2005: 146).

Furthermore, in order to use the questionnaire, researchers must take proper consideration in relations to the factors below (Denscombe, 2005: 147):

- (i) Costs that includes the expense needed to produce, distribute, collect and analyse the result of the questionnaire;
- (ii) Production of the questionnaire particularly on the time needed for developing a suitable questions and piloting the questionnaire as well as the size of the survey that is the larger size requires longer time of printing and production;
- (iii) Organization process which include the process for distribution, collection and analysis of results from questionnaire particularly a record of quantity of questionnaires are sent out, to whom they are sent and when they were sent;

- (iv) Schedule is quite important when the research involve a broad postal survey that do not require immediate result; and
- (v) Permission or leave is also very important particularly when the survey involved the respondents in certain authority that may require prior permission from its higher authority.

Apart from planning, drafting or designing the questionnaire also requires careful attention. Ethical and practical perspectives require the questionnaire to provide sufficient information that normally appears at the cover page of the questionnaires, on the following matters:

- (i) The name of institution in which the survey is undertaken or sponsored;
- (ii) The purpose of the questionnaire survey and the use of information gathered from the survey;
- (iii) Address and dateline for the completed questionnaire to be returned;
- (iv) The respondents should be assured that all the information gathered in the questionnaire is treated confidential and are used for the academic research purpose only; and
- (v) The questionnaire is filled up based on voluntary basis and the researcher acknowledges it through some word of thanks to the voluntary respondents.

For the purpose of this research, high consideration was paid towards the factors that would ensure the successful planning of the survey, namely the cost, production, organization and schedule. However, asking prior permission from appropriate authority is not really significant in the case of Malaysia, as the survey involve the customers of home financing from the market itself, and not from the bank because the list of the customers are fall under the bank secrecy act.

It should be noted that the essential information such as the name of institution in which the research is undertaken, the purpose of study and the use of data as well the address and dateline for the completed questionnaire to be returned are well explained at the cover page of each questionnaire. In addition, the respondents are willing to cooperate and all the data gathered are treated confidentially.

6.7.2.3 Questionnaire Design and Content

The content of questionnaire should be treated as the most significant part of the design. The researcher may choose either to use open or closed questions and likert-scale style. With an open ended question, respondents are asked a question and can reply however they wish, while closed questions they are presented with a set of fixed alternatives from which they have to choose an appropriate answer. In doing so, the research must observe some general rules in connection with the do's and don'ts of asking questions. The first is the research questions. Only questions which are vital and related to research should be asked. It is also important for the researcher to decide exactly what he wants to know and try to put him in the position of respondents and how he would respond or reply to the questions (Bryman, 2008:241).

It should be mentioned that the researcher needs to ensure that the questions will not be irritating for the respondents to answer; the respondents do have some information, knowledge, experience and opinions on the topic of the questions; the questions require the respondents to answer only about themselves or matters of fact they can realistically answer for the others; and the task of responding to the questionnaire should be made as straightforward and speedy as possible (Denscombe, 2005: 151).

In particular, the wording in the questions should avoid any ambiguous terms or technical jargons; avoid using of long, general, negative and leading questions; and questions that actually asking two questions (Bryman, 2008:242).

This current study used closed questions and likert-scale style. The questionnaire, a sample of which can be found in Appendix 2, has 6 pages including the front page, and the research questions reflect the questionnaire to be divided into 2 sections. The use of questionnaire aimed at finding what are the general perceptions and awareness of Malaysians towards Islamic home financing and what the customers' expect towards Islamic mortgage. As such, the first section consists of questions regarding the perceptions and awareness of the Islamic home financing product, while the second section consists of questions on customers' expectations of Islamic home financing.

The detail of the questionnaire was further developed based on the hypothesis made. Section 1 generally consists of the customers' perceptions of Islamic home financing. Question 1 and 2 are on housing mortgage product, which includes the mortgage provider and the type of mortgage. Question 3 requires the respondents to choose the reasons for using Islamic mortgage. For those who are not using Islamic mortgage, their reasons are also sought in Question 4. Both question 3 and 4 employed likert-scale style, where the reasons for using and not using Islamic mortgage are presented as 'not important at all', 'not important', 'neutral', 'important' and 'very important'. Question 5 required the respondents to state whether they compared Islamic and conventional mortgage products when deciding the best deal. For those who compared the product, they had to answer question 6, which provided the criterion deemed essential in the comparison. Question 6 was also likert-scale style with options varying from 'not important at all' to 'very important'. Respondents' opinions on the price of both mortgages were sought in question 7.

With the aim of gauging the customers' awareness on Islamic mortgage products, question 8 was presented using likert-scale style starting with 'not aware at all' to 'very aware'. This question deemed very important to examine the prospects of Islamic mortgage. This is because the implications of the contracts are difference between BBA, MM and *istisna*' home financing.

While question 9 and question 10 emphasis the term and repayment of the mortgage, question 11 to 13 emphasis on the property as a subject matter of the mortgage. In addition, the opinion of respondents' satisfactions on their mortgage chosen was also obtained in question 14. For those who satisfy with their mortgage, they have to answer question 15 which comprises several reasons for their satisfaction, while for those who not satisfy with their mortgages should also express their opinion of not satisfactory in question 16. Both question 15 and question 16 are presented in likert-scale style, starting with 'not important at all' to 'very important'.

Section 2 or question 17, of the questionnaire dealt with the respondents' expectations of Islamic mortgage, stated with lists of statement on how Islamic mortgage should be. The list of statement is generally designed after a thorough reference to the previous literature on Islamic mortgage, where the style of likert-scale is again employed starting with 'strongly

disagree', 'disagree', 'do not know', 'agree' and 'strongly agree'. This question indeed served one of the most important part of this research since the expectations of the respondents on Islamic mortgage are crucial to determine the current state of Islamic mortgage and how Islamic mortgage is expected to be, for the future prospect of Islamic mortgage in general, and MM home financing in particular.

Besides, it is worth mentioning that, while designing questions, the general rule and specific rules as mentioned above have been thoroughly observed in order to ensure that the thing get right at the first time. Moreover, the rules are further checked and observed when the questionnaire was accordingly amended after conducting a pilot study which will be discussed later.

6.7.2.4 Questionnaire Sampling

Sekaran (2003: 264) defines sampling as “the process of selecting the right individuals, objects or events for study”. Therefore, since it is not practical to collect data from every people, selecting sample would require a careful consideration plus researcher’s experience and practical skill to ensure that the targeted population is correctly chosen in order to have an impact on the generalisability and validity of the findings (Sekaran, 2003; Clegg, 1990).

In terms of sampling, there are two main categories: probability and non-probability samples. The former ensures that the samples taken are true representatives of the population as each person in the population has an equal chance of being included in the sample. However, non-probability sampling is used in the case when it is difficult or inappropriate to ensure that each person in the population has an equal chance of being in the sample. The types of probability sampling are: simple random sampling, systematic sampling, stratified random sampling and multi-stage cluster sampling. As for non-probability sampling, the types under this category are purposive or convenience sampling, snowball sampling and quota sampling (Bryman, 2008:171).

According to Clegg (1990), random sample is arguably a good way of collecting data, since it provides the population an equal chance of selection, which would prevent the element of bias. However, for the purpose of this study, instead of random sampling, non-probability sampling is used due to its relevancy and certain constraints such as time and costs. It should

be noted that the researcher had a maximum period of three months to collect the data as prescribed by the sponsor. In addition, the main challenge was the list of the bank customers who have mortgage, which were not in public domain and remain confidential and fall under bank secrecy act. Furthermore, Neuman (2004: 137) highlights that there is a tendency for qualitative researchers to use non probability as they rarely identify the sample size in advance and have limited knowledge about the larger population from which the sample is taken.

As such, the respondents in this study are chosen through convenience sampling that is by virtue of researcher's accessibility to data searched for this research. Convenience sampling is defined as "drawing samples that are both easily accessible and willing to participate in study" (Teddlie and Yu, 2007: 79). Besides, snowball sampling is also employed whereby individuals initially selected suggest the names of others who might be appropriate for the sample. Therefore, all of the respondents selected are having mortgage, either Islamic or conventional. They were from the area of Klang Valley whereby this place constitutes the largest residential area in Malaysia with majority of people are working, and thus were expected of have a property through access of mortgage. However, in doing so, the researcher attempted to establish diversity in the background of the respondents particularly in terms of social and economic classes by collecting the data from various places such as national festival, public schools, public hospitals, legal firms, *facebook* and some residential areas.

6.7.2.5 Pilot Study

As in most of the social science related projects, this study also conducted a pilot study. The need for piloting the questionnaire was not mainly to ensure that survey questions operate well, but also served to check that research instrument as a whole function properly and accordingly. The importance of pilot studies in survey research are as follows (Bryman, 2008:247):

- (i) It allows the researcher to determine the adequacy of instructions to respondents completing a self-completion questionnaire;
- (ii) It allows the researcher to consider how well the question flow and whether it is necessary to move some of them around to improve this feature; and

- (iii) In the case of self-completion questionnaire, piloting studies is very crucial as the researcher will not be present to clarify the confusion or misunderstanding on the questions, if any.

For the purpose of this research, the pilot study was conducted with 15 Malaysian initially were surveyed in the United Kingdom, prior to going back to Malaysia for the real fieldwork. They are acquaintances who use Islamic or conventional housing finances to answer the questionnaires. Then, their feedbacks resulted in some necessary amendment to the wordings and structure of questionnaire to improve it.

6.7.2.6 Questionnaire Administration

After the necessary amendments were made to the questionnaires, it was distributed by email or passed personally in the following local area:

- (i) 200 questionnaires were dropped in the post box in 2 new residential areas in Klang Valley, Malaysia. The questionnaires were put in together with the envelopes and stamps to enable the respondents sent back to the researcher once completed;
- (ii) 100 questionnaires were emailed to friends and family after getting their consent, via a *facebook*, to cooperate in this study;
- (iii) 100 questionnaires were personally given to the public in one of national event or festival known as '*jomheboh*' and Malaysian national youth day in Klang Valley;
- (iv) 60 questionnaires were personally sent to 5 different legal firms in Klang Valley, Malaysia, for the lawyers to distribute the questionnaires to the voluntary client who is having the mortgage; and
- (v) 100 questionnaires were also personally passed to the several public offices, schools and hospitals in Klang Valley.

Although Sekaran (2003) mentions that a minimum sample of 30 people may suffice to achieve a normal distribution in the case random sampling, this study had to consider larger sample for a better finding. Hence, with an earnest effort, 560 questionnaires were sent out and 280 questionnaires were returned but only 260 were analysed, making the response rate is 40%. The respondents were given the choice of either filling it in then and there or they were given up to 2 weeks before the questionnaire was collected by the researcher. If the

respondent had any queries, they could seek clarification through email or asked the researcher when the questionnaires were collected.

6.7.2.7 Reliability and Validity of Questionnaire

Like the interview, the requirement of reliability and validity is also very important in a questionnaire. Bryman (2008: 149) explains that reliability refers to the consistency or stability of a measure of a concept while validity refers to the issue whether an indicator that is developed to determine a concept really measures that concept. The measure can be said as reliable if it involves three important factors namely stability, internal reliability and inter-observer consistency. Kirk and Miller (1984:20) further emphasise that perfect reliability can be easily obtained without any validity. However, perfect validity, on the other hand, would ensure perfect reliability, for each observation would contribute the complete and exact truth.

Cohen *et al.* (2005:105) further explain that the validity of the questionnaire depends on whether respondents complete it accurately, honestly and correctly. Albeit it is impossible for research to be 100 per cent valid, it is understood that the validity of data can be enhanced through careful sampling, appropriate instrumentation and the appropriate statistical treatments of the data. Moreover, since the anonymity is kept a principle in completing the questionnaire, it provides an advantage by encouraging sincere and honest answers, which in turn help to improve the validity of the data.

Internal reliability can be tested using the Cronbach's Alpha. According to Vaus, (2002) Cronbach's Alpha is considered to be the most suitable internal consistency measure and therefore, widely used. "The strength of alpha is that it provides the most thorough analysis of patterns of internal consistency. Rather than relying on the way in which an individual variable is related to others, it examines how group of variables are related to groups of other variables and is therefore less affected by the peculiarity of an individual variable" (Vaus, 2002: 21). It essentially calculates the average of all possible split-half reliability coefficients. A computer alpha coefficient will vary between 1 (meaning that perfect internal reliability) and 0 (meaning that no internal reliability). The figure 0.80 is normally employed as a rule thumb to show an acceptable level of internal reliability, though many writers work with a slightly lower figure. For example, alpha was 0.70 was referred as satisfactory level while alpha 0.60 was referred as good (Bryman, 2008: 151; Vaus, 2002: 20).

As for this research, internal reliability test using Cronbach's Alpha is employed in order to calculate internal reliability of the questionnaire data. However, due to mutually exclusive nature of the questions, the test was done separately for each likert and itemized scale of questions, which is summarized in Table 6.1. The remaining questions were left out as they are dichotomous and category scale of questions.

Table 6.1: Cronbach's Alpha Test for Selected Survey's Questions

Question	Cronbach's alpha
3	0.838
4	0.841
6	0.915
8	0.841
15	0.930
16	0.830
17	0.856

As the results indicate, internal reliability was established for the questionnaire through the individual questions, as in all the cases, the results are above the benchmark rate of 0.8.

6.8 DATA ANALYSIS TECHNIQUES

In relation to data analysis, Denscombe (2005: 231) argues that in terms of theories and practices, although there are differences in the application of qualitative and quantitative research, it is rather overlapping with no clear dividing line, except in the analysis of data. He further argues that the main and clear distinction between qualitative research and quantitative research can only be seen through the treatment of data.

The difference between qualitative and quantitative research namely words as the unit of analysis vs. numbers as the unit of analysis; description vs. analysis; small scale studies vs. large scale studies; holistic perspective vs. specific focus; researcher involvement vs. researcher detachment; and emergent research design vs. predetermined research design, whereby the emphasis is on discovery not the proof. Since this research benefits from quantitative and qualitative data, both data analyses methods are utilized in reflecting on these measures.

6.8.1 Interviews: Qualitative Data Analysis Process

After the interviews were conducted, the transcribing process began with transcribing the interviews in order to note down all the interview data. In doing so, Sekaran (2003: 232) suggests that the process of transcribing should be made immediately so as to ensure that the researcher does not have difficulties in recalling the important data. However, in this research, the use of voice recorder helped the researcher to transcribe, as the researcher would not be able to memorize all the wording during the interview even some notes had been taken down. This is done by repeatedly listening to the recordings of the interviews, from the beginning until the end of the tape. After transcribing the interview data, the researcher identified the themes and their relationships by identifying the patterns and processes, commonalities and differences through coding system by arranging them through thematic analysis. According to Banister *et al.* (1994: 57), thematic analysis can be defined as “a coherent way of organizing or reading some interview material in relation to specific research questions. These readings are organized under thematic headings in ways that attempt to do justice both to the elements of the research questions and to the preoccupations of the interviewees”. This part is considered a vital part of the reflections undertaken by the researcher whereby this process is repeated time and again in order to refine the explanation and interpretation of the data (Miles and Huberman, 1994:9).

Then, it is also necessary for the researcher to go back to the field with these explanations and themes to check for validity. The researcher also tried to refine a set of generalisations that explain the themes and relationships were identified in the data. In addition, an attempt was made whenever possible to balance the new generalized statements with the existing findings in the literature (Denscombe, 2005: 272).

6.8.2 Questionnaire Survey: Quantitative Data Analysis Process

After collecting the questionnaires, the mass amount of data were edited and checked. Editing questionnaires involved checking for completeness to make sure that the respondents have properly answered every question. This process is necessary to discover and remove any errors that might have been made by the respondents and ultimately leave only usable responses to be further analysed using relevant statistical methods (Cohen *et al.*, 2005: 265).

In the second stage, the material was transformed from words format into the only format suitable for quantitative analysis namely numbers. This involves the process of coding the data. Coding entails the attribution of a number to a piece of data, or group of data, with the purpose of allowing such data to be analysed in quantitative terms. Then the raw data were further organized to make them more easily understood, including making it 'tally' of the frequencies (Denscombe, 2005:239).

In order to make sense of the data, the stage continues with transforming a mass raw data into tables and charts. This process is vital because it involves artfully moulding, extracting and refining the raw data, so that the meaning and significance can be grasped. For this, there are several computer packages that can process questionnaire survey data, examine the data using a wide range of statistics and producing graphs and tables. The computer package used in this research is SPSS version 16, which is a comprehensive statistical package to analyse the data.

The quantitative analysis of the quantitative data also requires giving meaning to the results; and therefore, the interpretation of these charts, tables and statistics is also done in order to have a better understanding of what all the results mean. The presentations of table and charts must also be done in a simple way as to ensure the reader able to interpret and understand the meaning of the data.

It should be noted that due to the nature of data and data collection process of not being random sampling, the analysis of the data and testing the hypotheses of this research is done by non-parametric tests. According to Pallant (2007:210), non-parametric techniques are suitable to be used for the data measured on nominal (categorical) and ordinal (ranked) scales where it involve a small sample and does not meet strict criteria of the parametric techniques. In terms of the analyses conducted, the analysis of this exploratory study begins with descriptive statistics and cross-tabulations. Then, whenever relevant and necessary, Kruskal Wallis test, Mann Whitney U test and factor analysis was utilised. The analysis of survey data is presented in Chapter 8.

6.9 LIMITATIONS AND DIFFICULTIES

Like any other research projects, this research is no different in that it has its limitations which are as follows:

- (i) The ability of the respondents to understand the questions asked is very difficult to assess as their level of understanding to the questions may vary according to social and economic background. Therefore, the personal email was given in the questionnaire for the respondent to ask any clarification if they have any queries about the questions asked.
- (ii) The willingness of the respondents in answering the questionnaire from the beginning until the end, honestly and earnestly is hard to be measured, instead of simply for the sake of putting down an answer.
- (iii) The data collection method was limited to survey and semi-structured interview without including other methods, for example focus group. Moreover, the sampling used in survey was confined to convenience sampling due to constraints in costs, time, and data protection;
- (iv) It would have been more beneficial if more respondents were surveyed in order to further enrich the findings. However, due to a limitation of time, this was not possible; and
- (v) The study is confined to case study on Islamic home financing in Malaysia only with specific area of Klang Valley.

In addition to the limitations mentioned above, there were a few difficulties that were encountered during the course of this research. These include:

- (i) Getting More Respondents

Although the questionnaire was purposely designed to be short and accurate to answer the research questions and test the hypotheses, the researcher still experienced difficulty in getting the respondents to complete the questionnaire. This is due to a time constraint provided by the sponsor where the researcher is only allowed to stay in Malaysia for the

maximum period of three months. Despite such constraints, 40% response rate out of 560 total questionnaires should be considered success.

In addition, this research employs a non-probability sampling (convenience and snow ball sampling) as a mode of getting the respondents. Although the researcher targeted to use random sampling, regulatory restrictions on banking secrecy imposed to the banks does not permit the access to the banks' customers' details. Within the boundaries of this constraint also, the researcher had difficulties to reach the respondents who only use Islamic mortgage, but have to extend the survey to all the respondents who have either Islamic or conventional mortgage.

As regards to the interviews, there were also difficulties in getting the interviewees as some of them are the person who are key officers in their institutions, thus were very busy and could only be reached after several attempts.

(ii) Analysing

There was also difficulty in analysing the survey data due to the fact that the researcher had no formal background in economics and statistical courses. However, with the guidance of the supervisor as well as several courses on statistical methods provided by the department, such difficulties could be overcome. In relation to sampling technique constraints, instead of using more robust statistical tools in analyzing the data, the researcher could only use non-parametric test which is arguably less powerful compared to parametric test.

(iii) Transcribing

There was also difficulty in transcribing a few parts of some of the voice recorder, partly because the voice of the interviewee did not seem clear enough and partly because of bad recording where a lot of background noise can be heard. To overcome this, the recorded interviews were transcribed soon after the interviews, as it was possible to remember some of the missing statements from the interviewees. The researcher took about four hours to transcribe each interview compared to the original duration of the interview which was approximately between one to two hours.

6.10 CONCLUSION

This chapter presents an overview of the methodology and methods that are utilized in this research. The aims in using the survey and interview methods were explained here. The discussion also extended to the justification for combining the quantitative and qualitative methods of data collection. The way in which each method was administered and how the data was analysed was also discussed.

As part of collecting primary data, the semi-structured interviews and questionnaire survey are considered to suit well with the subject being investigated. As for the interview, since MM home financing is a specialised subject, very few people were able to give the relevant responses to the questions posed. Although the sample for the interview is relatively small, the interviewees are the most proficient and prominent key players who are working directly on MM matters. Therefore, their opinions and experiences are sufficient to understand and interpret the answers. Moreover, besides the interview data, secondary data is also used to support the analysis. As for the questionnaire survey, the opinion of respondents who have a mortgage would be crucial in determining the prospects of Islamic mortgage. Survey questions were deliberately designed in general, without specifying on the MM home financing, with the intention of ensuring that questions are as clear as possible for the respondents. In doing so, several survey questions particularly on the respondents' expectation of Islamic mortgage were, however, inserted in order to link specifically with the potential of MM home financing in Malaysia.

Finally, like any other research project, there were limitations and difficulties encountered throughout, which were also the next two chapters are the empirical chapters, while the next chapter 7 will be about the analysis of interview data which will provide the material to explore further in the questionnaire analysis in Chapter 8.

CHAPTER 7

SEARCHING FOR CHALLENGES AND PROSPECTS OF MUSHARAKAH MUTANAQISAH HOME FINANCING IN MALAYSIA: INTERVIEW ANALYSIS

7.1 INTRODUCTION

This is the initial and core empirical chapter whose objective is to provide an interpretative meaning of the qualitative analysis of the interview data collected from the participants representing different stakeholders with the objective of discussing the issues from legal, *Shari'ah* and operational perspectives in the implementation of MM home financing as well as its prospects in Malaysia. The aim of the chapter, hence, is to develop a clear understanding of the operation of MM home financing; to explore the adequacy of existing laws in governing MM home financing; to explore the issues particularly on legal and *Shari'ah* matter as well as problems faced by Islamic banks in implementing MM home financing and to explore the banks and customers' acceptance and future prospect of this product.

This chapter analyses the information obtained from face-to-face semi structured interviews which were carried out to gather primary data for this study. The interviews were conducted from 1st May 2010 till 30th June 2010 in Kuala Lumpur, Malaysia, involving nineteen respondents from different backgrounds of individuals who are involved directly in the implementation of MM home financing in Malaysia, namely regulator, bankers, legal experts, *Shari'ah* advisors and Islamic economists. The participants are considered as all important individuals in their organizations, which make them key persons and experts in their respective areas.

The purpose of the interview was to obtain first-hand information and clear insight into what the interviewees perceive from their experiences and knowledge of MM home financing and their opinions on related issues. Their perceptions represented diverse observations of interested and disinterested individuals about MM home financing. The data subjected to

interpretative method of analysis is based on transcripts from the interviews. Therefore, by incorporating the analysis of the opinions and perceptions of industry practitioners, this analysis will certainly contribute significantly to the depth and reliability of this study.

Since the administration and the process of the interviews as well as the participant details are presented in the Research Methodology chapter, this chapter directly starts with a discussion on the seven interview questions related to issues and prospects of the implementation of MM home financing. The chapter continues with the data analysis section which analyses the responses from all the interviewees using the thematic analysis technique. This chapter then ends with a conclusion.

7.2 RESEARCH QUESTIONS AND DATA ANALYSIS

The interview questions were designed based on the study's objective which is to examine the issues and prospects of MM home financing in Malaysia. The following discussion elaborates basic interviewing questions in greater detail to show their consistency with the research objectives.

7.2.1 Operation of Islamic Home Financing Based on MM

This question is based on the first research objective which aims to develop a clear understanding on the operation of MM home financing practices through the information generated by the product providers and experts. Their opinions, responses, experiences and explanations are significant to show how they translate the principle of this new product into practice.

Table 7.1: Data Analysis for Research Question 1

Research Question 1	<i>Can you please explain the operation of Islamic home financing based on musharakah mutanaqisah in general?</i>
Focussed Coding	Sub-Themes/Remarks
1	Comprising combination number of contracts
2	Modus operandi
Concluding Theme	Operation of <i>musharakah mutanaqisah</i> is determined and shaped by a number of combinations of contracts with a particular modus operandi.

Based on the results in Table 7.1, the application of MM consists of several contracts with certain types of process in order to reflect the *Shari'ah* and legal requirement available in Malaysia, besides meeting the customers' needs and become commercially viable. Table 7.2

provides the focussed coding through the remarks from the respondents on every theme of the focussed coding.

Table 7.2: Focussed Coding No. 1 for Research Question 1

Sub-Theme	Comprising combination number of contracts
Interview No	Remarks
All interviews	<i>Musharakah</i> , lease and sale contracts
Interview 10	<i>Musharakah</i> /partnership contract involved is <i>shirkatul milk</i> , thus make it more flexible
Interview 11	Normal lease contract for completed house Forward lease contract for house under construction
Interview 11	Not a normal partnership under partnership act; customer does not a partner to the bank' business per se

As can be seen in Table 7.2, MM comprises of several contracts namely *musharakah*, lease and sale contracts. In order for the contract to be flexible for the bank and the customer, *musharakah* used is *shirkatul milk*, whereby in this type of *musharakah*, certain Shariah principles can be relaxed compared to *shirkatul aqad*. However, this contract of *musharakah* is different and does not fall under the definition of Malaysian statutory law of Partnership Act because customer does not have a partnership with the bank's business *per se*. Instead, it is meant for a co-ownership to own the house, in which the bank provides the financing facility for the customer to become the sole owner of the house at the end of the tenure. Besides, in the case of leasing the bank's portion to the customer, a normal lease will take place if the house is already completed, but if it is under construction, forward lease will be applicable to both parties.

Table 7.3: Focussed Coding No. 2 for Research Question 1

Sub-Theme	Modus Operandi
Interview No	Remarks
All interviews	Customer pays 10% deposit and apply for financing. Bank pays the remaining balance 90% and thus co-own the house with the customer. Bank gets profit by leasing out its portion to customer, and the latter pays rental. Customer undertakes to gradually purchase the bank's share until he/she become the sole owner of the house.
Interview 11	Portion goes towards rental will be reducing Portion goes towards purchasing the bank's shares is increasing

In terms of the application of MM, see above Table 7.3, all interviewees shared the common view on its modus operandi. It begins with the *musharakah*/partnership contract whereby the bank and customer will jointly own to acquire a property by paying 10% and 90% of the house price respectively. Subsequently, the bank will enter into leasing agreement with the

client, by leasing its portion of shares to the client. On a gradual basis, the customer redeems the bank's shares and that is construed as a sale contract. The customer then buys the shares from the bank based on schedule agreed by the parties. The process typically involves specific software which automatically calculates the reduction of the bank shares and the increase of the customer shares in the property. The portion paid will go to the rental and purchase of the banks' shares. The former actually reflects the profit of the bank earned from this home financing provided to the customer. Although it would appear that the customer pays the same amount of money every month, the portion goes towards rental is expected to be proportionally reduced while the portion for purchasing the banks' shares is increasing.

In sum, as the analysis evidences, MM is indeed a new hybrid contracts comprise of *musharakah*, lease and sale. As such, the most important thing is the parameters in combining all the contracts with the objective of adhering to the respective contractual norms as an individual contract and then should be consistent with each other in terms of principles. In other words, particularly each contract must be separated and independent and it has to follow certain sequence and must not be conditional to another contract. Then, it is also important for every contract to strictly observe the unique features of each contract in order to reflect the spirit of *Shari'ah* while translating such contract into practice.

7.2.2 Legal Framework and the Adequacy of Current Law Governing the Application of MM Home Financing in Malaysia

The interviewees' opinions on the legal implementation of MM home financing are significant in order to determine the current state of the legal framework of MM home financing's operation. Besides, the responses also include their opinion on the adequacy of the law governing MM as a new home financing product. This question is based on the second research objective which critically analyses the legal framework governing the implementation of MM home financing and the adequacy of the legal framework.

Table 7.4: Data Analysis for Research Question 2

Research Question 2	<i>How is musharakah mutanaqisah legally operated now?</i>
Focussed Coding	Sub-Themes/Remarks
1	Conceptually based on Islamic principles
2	Legally operated based on conventional principles
3	Dominant spirit of debt financing
Concluding Theme	MM home financing in Malaysia is conceptually based on Islamic principles but legally operated based on conventional principles of laws with the spirit of debt financing is still dominant.

Based on the results obtained from the interviews, as depicted in Table 7.4., it highlights that MM home financing is conceptually based on the Islamic contract principles, but legally operates on the conventional principles with the element of debt financing being still dominant in its application. Given below are the remarks from the respondents on every theme of the focussed coding identified in Table 7.4.

Table 7.5: Focussed Coding No. 1 for Research Question 2

Sub-Theme	Conceptually based on Islamic principles
Interview No	Remarks
Interview 4 and 5	It is obviously based on <i>musharakah</i> , <i>ijarah</i> and sale contracts
Interview 6 and 7	Based on principles of <i>shariah</i> contracts
Interview 10	Emulate based on <i>shariah</i> partnership
Interview 11 and 13	Basic concept of <i>shirkah</i> , <i>ijarah</i> and sale
Interview 18	Contract of course based on <i>shariah</i> partnership and <i>ijarah</i>
Interview 19	Genuinely Islamic banking product based on Islamic contracts

Table 7.5 lists remarks made by the interviewees that MM home financing is conceptually designed based on the Islamic principles of contract. They further highlighted that the contract used particularly as partnership, leasing and sale contract are indeed derived from *musharakah*, *ijarah* and sale which themselves are *Shari'ah* contracts.

Table 7.6: Focussed Coding No. 2 for Research Question 2

Sub-Theme	Legally operated based on conventional principles
Interview No	Remarks
Interview 6 and 7	Legally operate under civil laws example charge
Interview 11	For additional legal safeguards like caveat, charge and trust
Interview 13	Legal perspective based on conventional laws
Interview 15 and 16	Practice must suit local and legal structure
Interview 18	Essence of operation is based on conventional

Table 7.6 provides their opinion regarding its implementation in which they stressed that the MM product legally operates based on the conventional principles. Their remarks clearly showed that this happened due to legal framework applicable to the Islamic home financing which is conventional in nature. Furthermore, since Malaysia is a country with a dual banking system, the application of Islamic banking exists side by side with the conventional banking system. Therefore, the need to suit with the current legal framework and structure make it look as same as debt financing or conventional loan. For example, Interviewee 11 opined that the use of legal protection based on either charge or caveat make the MM is perceived more likely debt financing contract.

Table 7.7: Focussed Coding No. 3 for Research Question 2

Sub-Theme	Dominant spirit of debt financing
Interview No	Remarks
Interview 2	Most of the banks treat MM like BBA
Interview 9	Most banks treated it as a debt financing
Interview 10	Spirit of debt financing is dominant
Interview 11	It is not purely equity financing due to leasing and sale element
Interview 13	Absent of trust element may make <i>musharakah</i> as debt kind of relationship
Interview 17	It is regarded as debt financing

Table 7.7 as part of third focussed coding, further explains the reasons for the so-called ‘spiritually debt financing’. As mentioned earlier, in order to be enforceable before the court of law, the operation of this product must suit the local and legal structure which themselves are conventional. Moreover, the aggravated factor from the practice of most Islamic banks which is familiar with debt financing, thus requires charge as a collateral for financing, making it more conventional. The charge used in this product is derived from the National Land Code which is the conventional law governing land matters in Malaysia. The process applicable during the event of a default also contributes to it. Such a process will be highlighted later in the issues of the implementation of this product.

In further discussing and exploring the legal aspects of MM home financing, Question 3 aims to discuss the adequacy of the law governing the operation of MM home financing in Malaysia.

Table 7.8: Data Analysis for Interview Question 3

Interview Question 3	<i>Do you find the current law adequate to govern the operation of MM?</i>
Focussed Coding	Sub-Themes/Remarks
1	Current law is adequate to govern the operation but still need further improvements
2	Current law is not adequate at all
Concluding Theme	There are diverse opinions on the adequacy of current law to govern the operation of MM home financing. However, majority of them opined current laws are adequate to govern the operation of this product with necessary improvements and amendment needed to be done.

As the Table 7.8 shows, two themes were extracted from the lists which showed the different opinions among the respondents in relation to the adequacy of the legal provisions. The first view believed that the current law is adequate to govern the operation of this new home financing product with necessary improvements to the current legal framework. On the contrary, the second view held that the current law is completely inadequate to govern its

application. Given below are the remarks from the respondents on every theme of the focussed coding.

Table 7.9: Focussed Coding No. 1 for Interview Question 3

Sub-Theme	Current law is adequate to govern the operation but still need further improvements
Interview No	Remarks
Interview 7	Our legal frameworks are enough, if not my bank would not offer this MM
Interview 11	Current frameworks are adequate, otherwise the banks will not offer this product
Interview 11	Further improvement on the protection on part of bank without charge, caveat and trust need to be done
Interview 11	Further consideration on partnership contract itself since it is not construed under Partnership Act
Interview 11	The case has yet to be tested before the court of law
Interview 14	Current laws are adequate for the banks to offer this new product
Interview 14	Current structure not really ideal because it is structured in conventional ways
Interview 14	We are expect more legal issues when the case is brought before the court of law
Interview 17	Our practice on MM is merely modifications to suit the current structure

Table 7.10: Focussed Coding No. 2 for Interview Question 3

Sub-Theme	Current law is not adequate at all
Interview No	Remarks
Interview 4	What are the governing law to govern the dispute in future in the event there is a conflict between SAC and civil law?
Interview 10	Need a new law to settle ownership issue for example having a trustee to handle the ownership issue
Interview 12	MM issues is unique and current law do not cover the risk and liabilities of the banks
Interview 13	MM involves unique arrangements and therefore should have specific law to govern the contract of partnership, leasing and sale

The focussed coding in Table 7.9, presents the opinions of those participants who believed that the current law is adequate to govern the operation of this new product, but some improvements to the current laws may be needed to ensure the interest of the transacting parties is further protected. Besides, further amendments to the current legal structure may be required to implement the *musharakah* contract in more genuine manner which reflects the spirit of *Shari'ah*. Despite such a positive attitude, one of the interviewees stressed that the case has not been tested within the legal system yet; and therefore implying that while it may seem that the legal environment is currently adequate, this may not necessarily be the case after a court case. This will then show whether the amendments to the current practice in the development of MM will pass the test or not.

On the other hand, the findings on the focussed coding 2 of the Question 3 in Table 7.10 demonstrates the responses from some interviewees that the current law is completely inadequate to govern the operation of MM home financing, since there is no specific law governing this new product, particularly the contract of partnership, leasing and sale from *Shari'ah* point of view. These interviewees made particular references to specific nature and the uniqueness of this new product and therefore argued for the issuance of new laws to incorporate these features to have a robust legal framework.

7.2.3 Issues and Problems in the Implementation of MM Home Financing in Malaysia

These questions are consistent with the third research objective which is to critically analyse the issues and problems in implementing MM as an alternative to BBA home financing. Generally, the participants' responses to the issues can be divided into three: *Shari'ah*, legal and operational issues. More interestingly, their responses revealed how they deal with all these issues in implementing the MM product.

Table 7.11: Data Analysis for Interview Question 4

Interview Question 4	What are the issues in implementing musharakah mutanaqisah home financing in Malaysia?
Focussed Coding	Sub-Themes/Remarks
1	Shariah Issues <ol style="list-style-type: none"> i. Maintenance and <i>takaful</i> <ol style="list-style-type: none"> a. Both are borne by the customer and it is permissible so long the parties agree b. Commercial transaction (practicality) vs <i>shariah</i> requirement ii. <i>Wa'd</i> <ol style="list-style-type: none"> a. Typically used as an important instrument to secure the purchase of bank's shares by the customer under 2 situations b. Permissible if both parties agree c. Unilateral in nature, but should look to the contract as a whole d. May invoke <i>shariah</i> consideration as to genuineness of the product
2	Operational issue Rental is benchmarked from the based financing rate due to element of competition
3	Legal issues <ol style="list-style-type: none"> i. Ownership <ul style="list-style-type: none"> • Current legal structure does not allow for the registration for both owners • Legal ownership is normally on the customer, thus the interest of bank is safeguarded by creating a charge over the property except for KFH ii. No standardization of the documentations though the basic principles are same iii. Event of default <ol style="list-style-type: none"> a. Procedure is typically treated same as conventional loan

	b. Two approaches if there is shortfall; firstly recourse from the customer, secondly no recourse c. <i>Shariah</i> consideration; to get recourse from the customer d. Should divided the loss accordingly to the shares to reflect <i>musharakah</i>
Concluding Theme	<i>Since MM is a new product of Islamic home financing, there are several issues raised and highlighted by the interviewees from the implementation of this new Islamic home financing product which consist of Shari'ah, legal and operational issues.</i>

As can be seen in Table 7.11, the opinions of the responds to the question on the issues faced in the implementation of the MM home financing in Malaysia, three themes on the types of issues were derived from the result obtained from the interviews: legal issues, *Shari'ah* issues and operational issues. Tables 7.12 and 7.13 provide the remarks from the respondents on each and every theme of the focussed coding.

Table 7.12: Focussed Coding No. 1 (i) (a) for Interview Question 4

Sub-Theme	<i>Shari'ah</i> Issue: Maintenance and <i>Takaful</i> Both are borne by the customer and it is permissible so long the parties agree
Interview No	Remarks
Interview 2 and 3	It is covered under Service Labour Agreement, the bank still bear the cost of maintenance but the customer paid for it and it is set off with the rental
Interview 13	Theoretically, the one who should maintain the property should be the one who hold more on the ownership shares, same goes to <i>takaful</i>
Interview 15 and 16	All expenses on maintenance and <i>takaful</i> should be borne by the customers including quit rent. No issue so long the parties agree between themselves.
Interview 18	All expenses born by customer; no issue if the customer agrees to bear all the expenses
Interview 19	In theory, maintenance and <i>takaful</i> should be shared by the parties

Table 7.12 highlights the *Shari'ah* issue of *maintenance* and *takaful*. Based on the interviews, the current practice by Islamic banks in MM home financing requires the maintenance and *takaful* to be borne by the customer. Although the basic *Shari'ah* principle requires both parties to share the expenses of maintenance and *takaful*, in practice, the obligation may solely be released to customer provided that both parties agree to it. Such an arrangement is under Service Labour Agreement whereby the customer will be appointed as an agent to carry out maintenance related to the house.

Table 7.13: Focussed Coding No. 1 (i) (b) for Interview Question 4

Sub-Theme	<i>Shari'ah</i> Issue: Maintenance and <i>takaful</i> Commercial transaction (practicality) vs <i>shariah</i> requirement
Interview No	Remarks
Interview 4 and 5	Customer is appointed as agent to pay all those maintenance and <i>takaful</i> with their own expenses because the customer wants to own the house and get benefit from it.
Interview 6 and 7	It is not based on lessor and lessee relationship; but method of financing and not business <i>musharakah</i> , the customer have to pay all the expenses since they enjoy the property
Interview 8	Based on commercial transaction, “who will own and benefit from the property?” Therefore, obligation is released to the customer to bear all the expenses
Interview 10	Same practice with AITAB, looking at its practicality rather than general <i>shariah</i> principle. The charge is put on the bank but later build up in the rent and eventually transfer to the customer
Interview 11	Though maintenance and <i>takaful</i> should be proportionate to the portion of ownership, in practical bank will appoint customer as an agent to do the maintenance and it will be set off from the selling price paid by the customer
Interview 12	Maintenance and <i>takaful</i> are recurring issues
Interview 14	<i>Shariah</i> requirement vs current financing structure; Current financing structure normally made the payment done one way, it rarely done both ways

In relation to this issue, Table 7.13 further provides for the reasoning of this particular practice being due to the practicality and commercial transaction or business decision. Interview 14 clearly stated that on the basis of practicality, current financing structure normally made the payment done one way, it rarely done both ways. As such, the expenses of maintenance and *takaful* is transferred to the customer, and will be set off from the total price of the property. Besides, Interview 8 believed that the customer is the most appropriate party to do all the maintenance and *takaful* as he is the one who enjoys the benefit and owns the house at the end of the tenure.

Tables 7.14 until 7.17 show the interviewees' various responses regarding the *Shari'ah* issue of *wa'd* (unilateral promise). As highlighted in Table 7.14, in practice, *wa'd* is normally used as a mechanism to secure the interest of the bank. It exists under two situations: firstly, when a promise is made by the customer to gradually purchase the bank's share until the end of the financing, and secondly promise is made by the customer to purchase the all the bank's shares in the case of default. Interview 10 opined that this particular practice is deemed permissible if both parties agree to it, and the same situation is also practised in the Middle East (refer to Table 7.15).

Table 7.14: Focussed Coding No. 1 (ii) (a) for Interview Question 4

Sub-Theme	Shari'ah Issues: <i>Wa'd</i> is typically used as an important instrument to secure the purchase of bank's shares by the customer under 2 situations
Interview No	Remarks
Interview 1	Applicable under 2 situation; namely for the buying of bank's share on periodic basis and to buy entire share during event of default
Interview 11	As a mechanism in which the customer promise firstly to buy the bank's share on periodic basis and secondly to buy entire share during event of default
Interview 12	Serve as an important instrument to secure banks' interests just like normal BBA
Interview 17	It is fair to ensure the customer stay with their promises to purchase the entire shares

Table 7.15: Focussed Coding No. 1 (ii) (b) for Interview Question 4

Sub-Theme	Shariah Issues: <i>Wa'd</i> is permissible if both parties agree
Interview No	Remarks
Interview 10	In middle east, purchase undertaking is allowed and the parties may agree on it
Interview 15 and 16	So long the parties agree, it does not stop the parties to have it

The effect of *wa'd* or unilateral promise which is practised in MM home financing has been shown in Table 7.16. Interview 14 opined that based on *Shari'ah* perspective, this unilateral promise per se is not binding. However, in order to give it effect, the promise can be considered to be a part of the whole contract and is not independent. The customer is bound to his promise as part of his obligations to perform and fulfil the contract. The practice, however, may invoke a *Shari'ah* consideration as *wa'd* is deemed to serve a guarantee for the bank's profit, and indirectly tarnish the genuineness of *musharakah* contract in which both parties must bear all the loss accordingly based on their respective shares (refer to Table 7.17).

Table 7.16: Focussed Coding No. 1 (ii) (c) for Interview Question 4

Sub-Theme	Shariah Issues: Although <i>Wa'd</i> is unilateral in nature, the court will consider it as the whole contract
Interview No	Remarks
Interview 6 and 7	It is put in the agreement and must be read as a contract as a whole
Interview 8	Literally not binding in <i>Shari'ah</i> but legally binding under the contract as a whole
Interview 14	Unilateral in nature and not a contract per se but it should be looked as part of entire structure to give effect on it
Interview 19	It is not unilateral promise in the entire contract

Table 7.17: Focussed Coding No. 1 (ii) (d) for Interview Question 4

Sub-Theme	<i>Shari'ah</i> Issues: <i>Wa'd</i> may invoke <i>Shari'ah</i> consideration as to genuineness of the product
Interview No	Remarks
Interview 8	Promise is as good as guarantee
Interview 11	True equity does not require <i>wa'd</i> for default
Interview 12	Serve as a guarantee for the bank which may invoke <i>Shari'ah</i> consideration and blurs the genuineness of MM concept
Interview 18	BFR and <i>wa'd</i> make MM same as conventional or debt based financing

Table 7.18: Focussed Coding No. 2 for Interview Question 4

Sub-Theme	Operational issue: Rental is benchmarked from the based financing rate due to element of competition
Interview No	Remarks
Interview 4 and 5	Rental payment will depend on financing rate
Interview 6 and 7	Rental is benchmark based on based financing rate
Interview 9	We base our rental on financing rate
Interview 10	It is not practical to benchmark on rental index because it is a financing product and must be competitive
Interview 14	Rental is based on financing rate and not the rental rate of that similar property; it is allowed so long the parties agree
Interview 15 and 16	Rental is like the instalment which based on Based Lending Rate
Interview 17	By benchmarking rental to based financing rate, it makes the rental delink with the value of property
Interview 18	Putting BFR and <i>wa'd</i> to MM will make it mimicking the conventional loan or debt based financing
Interview 19	Due to element of competition, rental is based on financing rate Current rental does not reflect the real benefit on the value of the property enjoyed by the customer

Table 7.18 highlights the respondents' remarks on the use of based financing rate (BFR) as a benchmark of a rental. All banks offering MM currently are using the financing rate which is derived from the conventional system. The use of BFR rather than rental index will ensure that the bank competes with its conventional counterparts. However, Interview 17 argued that this practice blurs the uniqueness of rental as benchmarking to rental index means that, the rental is essentially tie to the value of the property, in which the benefit enjoy by the customer with particular property.

Table 7.19: Focussed Coding No. 3 (i) (a) for Interview Question 4

Sub-Theme	Legal issue: Ownership Current legal structure does not allow for the registration for both owners
Interview No	Remarks
Interview 4 and 5	It is difficult to register the banks name as legal owner
Interview 8	<i>Shari'ah</i> allows either parties to be registered as legal owner due to legal constraints
Interview 13	It will depend on the interpretation of court whether banks can put their names as legal owner or not
Interview 14	Joint ownership is some possible legal constraints in our existing legal framework
Interview 15 and 16	The problem with MM is the legal aspect for ownership is not fully in place

Table 7.19 depicts the remarks made by the interviewees on the legal issue of ownership. It has been highlighted by the interviewees that current legal structure is not in place to accommodate the registration of both parties in the title of the property. The National Land Code in particular, is a statutory law governing land matters in Malaysia, and it does not provide equity based financing to reflect the amount of shares held by the parties throughout the financing period.

Table 7.20: Focussed Coding No. 3 (i) (b) for Interview Question 4

Sub-Theme	Legal issue: Ownership Legal ownership is normally on the customer, thus the interest of bank is safeguarded by creating a charge over the property except for KFH
Interview No	Remarks
Interview 3	The property is owned by KFH and customer and bank is appointed a trustee and no charge is created
Interview 5 and 6	The customer becomes a registered owner and banks have beneficial ownership
Interview 7	Legal ownership is to the customer but charge is created to the bank
Interview 9	Bank becomes a beneficial owner of the property
Interview 10	Bank has beneficial ownership and our <i>Shari'ah</i> committee recognised it
Interview 11	Survey confirmed that it is more attractive for the customer to be a legal owner
Interview 11	Most banks will typically create charge; except KFH create trust
Interview 12	Most banks do not register their names as legal owners except KFH
Interview 14	In Malaysia, we have legal ownership in one party only and normally they are the customer
Interview 17	KFH is the only bank who hold the property on the bank's name
Interview 19	Ownership of the property belongs to the customer as the legal owner

As such, most of the interviewees in Table 7.20 highlighted that most of the banks will place the name of the customer as the legal owner of the property. The bank will remain as a beneficial owner of the land, and will enter a charge over the property to secure their interests over it. However, there is a unique case of Kuwait Finance House where the name of the bank is registered as a legal owner and will hold the property on trust to the customer.

Table 7.21: Focussed Coding No. 3 (ii) for Interview Question 4

Sub-Theme	Legal issue: No standardization in legal documentations; though the basic principles are same
Interview No	Remarks
Interview 2	We do not take charge, so our documents are different
Interview 7	No uniformity in documentations, but we take initiative to do better by comparing to others
Interview 8	No uniformity; depends on business needs and request; but the whole idea still the same
Interview 9	Banks have different types of documents but the foundation still the same
Interview 10	No uniformity in documentations, BNM just give the general guidelines
Interview 11	Common mechanism used except on certain things for example event of default
Interview 13	Uniformity of the documentations does not exist but the basic principles are same
Interview 14	MM requires more documents but it is not the same among the banks
Interview 15 and 16	Not uniform

Table 7.21 depicts the legal issue of non-uniformity of MM documentations. A majority of the interviewees opined that besides employing the same legal firm to advise and draft relevant documentations for this product, standardization never exists due to different needs and requests by the banks. Albeit different treatment, for instance in the event of default, the basic ideas and principles of the MM home financing are similar among the banks.

Table 7.22: Focussed Coding No. 3 (iii) (a) for Interview Question 4

Sub-Theme	Legal issue: Event of default (EOD) Procedure is typically treated same as conventional loan
Interview No	Remarks
Interview 2	Option for remedy; can ask for the entire purchase which is same as debt based financing
Interview 4 and 5	The customer has to pay all the <i>musharakah</i> unit; If not, the property will be sold on auction
Interview 7	Deemed as breach of contract and normal procedure applies
Interview 8	Purchase undertaking will create indebtedness if the customer fail to pay all the amount due
Interview 9	EOD process same as conventional system; there will be three notices (letter of demand) before the foreclosure
Interview 10	Purchase undertaking will be exercised
Interview 11	<i>Wa'd</i> is used to create indebtedness.
Interview 12	EOD will trigger the <i>wa'd</i> ; the customer has to buy all the share
Interview 13	Purchase undertaking for <i>wa'd</i> will force the customer to pay all the payment due; like a normal debt financing and perceived as similar to conventional loan
Interview 15 and 16	Normal foreclosure take place; except for KFH; do not foreclose since the title is under the bank's name
Interview 18	Similar to conventional but better than BBA

Table 7.23: Focussed Coding No. 3 (iii) (b) for Interview Question 4

Sub-Theme	Legal issue: Event of default (EOD) Two approaches if there is shortfall; firstly recourse from the customer, secondly no recourse
Interview No	Remarks
Interview 4 and 5	If there is shortfall, the bank asks the customer to pay, if there is surplus, it will give back to the customer
Interview 7	Recourse from customer if there is any shortfall. If there is excess, the bank give back to the customer
Interview 8	If there is shortfall, the customer has to pay it because he is breach of promise
Interview 10	If there is deficit, some bank absorb it but some get recourse from customer
Interview 11	If the customer fail to pay, the property will be sold on auction, if there is shortfall in the proceed, some banks get recourse from the customer and some bank not.

Table 7.24: Focussed Coding No. 3 (iii) (c) for Interview Question 4

Sub-Theme	Legal issue: Event of default (EOD) <i>Shari'ah</i> consideration; to get recourse from the customer
Interview No	Remarks
Interview 12	It actually involves <i>Shari'ah</i> consideration because it amount to guarantee

Table 7.25: Focussed Coding No. 3 (iii) (d) for Interview Question 4

Sub-Theme	Legal issue: Event of default (EOD) Should divided the loss accordingly to the shares to reflect <i>musharakah</i>
Interview No	Remarks
Interview 11	Should divided the loss based on the shares if it is <i>musharakah</i>
Interview 12	The loss should be divided accordingly to reflect the <i>musharakah</i> arrangement
Interview 19	Procedures should be reconsidered to establish long and good relationship between the parties

Table 7.22 until Table 7.25 highlight the discussion on the legal issue of the event of a default. Based on the remarks made by the interviewees, the procedure for the event of a default is as similar as debt based financing or conventional loan. The situation deteriorates when most of the banks will obtain recourse from the customer in the event of shortfall on the price of house sold on auction. This approach inevitably triggers the *Shari'ah* considerations when the banks are expected to share the loss with the customer according to their respective shares.

Table 7.26: Data Analysis for Interview Question 5

Interview Question 5	<i>Are there any pertinent problems arising from the current practice of MM? If yes, could you please explain such problem(s)?</i>
Focussed Coding	Sub-Themes/Remarks
1	Bank's problems <ul style="list-style-type: none"> • Risk weightage • Additional administrative work, • Additional IT system • No standard parameters • Legal framework • <i>Shari'ah</i> requirement vs business decision • Equity financing vs debt financing • Lack of marketing
2	Customer's problems
Concluding Theme	<i>There are several problems arising from the new implementation of this home financing product which the problems are from the bank's side as well as the customers.</i>

In relations to the interview question 5, which reflected the third research objective that is the main problems have been faced by the banks and customers in the implementation of MM home financing in Malaysia. These problems ranges from risk related issues to marketing related issues, which are presented in details in the Tables from 7.27 to 7.31, as the remarks from the respondents on each and every theme of the focussed coding.

Table 7.27: Focussed Coding No. 1 (a) for Interview Question 5

Sub-Theme	Bank's problems <ul style="list-style-type: none"> • Risk weightage
Interview No	Remarks
Interview 9	MM structure requires more capital risk weightage
Interview 11	Higher risk weightage requires the bank to allocate more capital, add cost to bank
Interview 19	Equity financing requires the bank to increase the capital. Will the bank capable to do it?

Table 7.28: Focussed Coding No. 1 (b) for Interview Question 5

Sub-Theme	Bank's problems <ul style="list-style-type: none"> • Additional administrative work, • Additional information technology (IT) system
Interview No	Remarks
Interview 8	Banks have to incur more cost due to more documents needed in MM
Interview 15 and 16	More administrative works, additional workforce and additional IT system
Interview 19	Investment constraints; new product, new IT system

Table 7.29: Focussed Coding No. 1 (c) for Interview Question 5

Sub-Theme	Bank's problems
	<ul style="list-style-type: none"> No standard parameters Legal framework
Interview No	Remarks
Interview 2 and 3	Current structure requires further explanation to developers and customers Developers is not familiar with the current structure of MM No precedent to be referred to
Interview 9	No standard parameter for the regulator Legal framework on ownership is inadequate More problems in future if the case brought to court
Interview 10	MM has yet been tested, so legal perspective remains as it is BNM is out of control to dictate the law reforms if it outside its jurisdictions for example land legislation
Interview 11	Further problems when the case brought to court later
Interview 12	Legal framework; problem in registering both names as the co owners
Interview 14	Land legislation does not captive with the development of Islamic finance and does not recognise <i>musharakah</i> structure

Table 7.30: Focussed Coding No. 1 (d) for Interview Question 5

Sub-Theme	Bank's problems
	<ul style="list-style-type: none"> <i>Shari'ah</i> requirement vs business decision Equity financing vs debt financing Lack of marketing
Interview No	Remarks
Interview 8	Lack of knowledge on part of bank's staff
Interview 12	The use of <i>wa'd</i> in MM replicate the old BBA concept
Interview 13	Most of the banks are reluctant to share the loss during EOD The label is <i>musharakah</i> , but the substance is still debt financing <i>Shari'ah</i> advisor stress more on structure
Interview 17	It is similar to debt financing product
Interview 18	It is similar to conventional loan

Table 7.31: Focussed Coding No. 2 for Interview Question 5

Sub-Theme	Customer's problems
Interview No	Remarks
Interview 2	Lack of knowledge on new product
Interview 6 and 7	Public perception on charge

This interview question highlighted the responses from the interviews on the constraints and problems faced by the banks in implementing MM home financing in Malaysia, as presented in Table 7.27. Undoubtedly, since it is a relatively new product, there are many problems faced by the banks in their attempt to implement this new product. Tables 7.26 to 7.30 highlight the bank's problems which include additional administrative work, extra workforce, and additional IT system, huge capital risk and also the current structure, to a certain extent, requires the bank to offer further explanation to developers and customers, which could feel unhappy to deal with the new structure of *musharakah* home financing.

Table 7.31 shows the problem from the customer side in understanding this new home financing product and their perception to the charge imposed on to secure the bank's interest, particularly when the bank itself is the co owner of the house.

7.2.4 Banks' and Customers' Acceptance and Future Prospect of MM Home Financing in Malaysia

Last research objective is to examine the banks and customers' acceptance and future prospect of MM home financing, which is discussed by Question 6 in the interviews. The main coding of the expressed opinions is depicted in Table 7.32. As can be seen, there are diverse opinions prevailing among the interviewees, as some of them view MM as a better alternative to BBA home financing, while some of them held that MM just serve as another new product to home financing, thus provides choices to the customers.

Table 7.32: Data Analysis for Interview Question 6

Interview Question 6	<i>How do you foresee the future of musharakah mutanaqisah as a better alternative for Islamic home financing?</i>
Focussed Coding	Sub-Themes/Remarks
1	Better alternative for the bank <ul style="list-style-type: none"> Funding issues; floating rate make it manageable compared to fixed rate for long term financing
2	Better alternative for the customer <ul style="list-style-type: none"> Bank sharing higher risk compared to BBA Variety of Islamic home financing product Withdrawal flexibility No issue of getting rebate Cheaper compared to BBA fixed financing Shorter period of financing
3	Better alternative for <i>Shari'ah</i> perspective <ul style="list-style-type: none"> No more <i>Inah</i> or BBA (to certain extent). If genuinely applied in accordance to <i>Shari'ah</i> principles
Concluding Theme	The future of MM as a relatively new home financing product were highlighted into three main themes which are better alternative on part of the banks, better alternative on part of the customers and some <i>Shari'ah</i> consideration on its future applicability.

As can be seen from Table 7.33 on question 6, which reflects the fourth research objectives, there is a promising future of MM home financing in Malaysia. Three main themes derived from all the responses given by the respondents are: MM being a better alternative for the banks; MM provides a better alternative home financing for the customers; and MM is a better option from *Shari'ah* point of view. The following Tables from 7.33 to 7.35 provide

the focussed coding as the remarks from the respondents on each and every theme of the established themes.

Table 7.33: Focussed Coding No. 1 for Interview Question 6

Sub-Theme	Better alternative for the bank
Interview No	Remarks
Interview 2	Expedite the sale process since the bank own the property (KFH)
Interview 9	Funding issues Floating rate make it manageable compared to fixed rate for long term financing
Interview 11	Funding management; easier for bank as they do not have to estimate their cost over the long period of time
Interview 14	The formula is same as conventional except the term principal is changed to ownership and interest to rental
Interview 15	Bank has capping; incentives when interest rate going up
Interview 19	Floating rate is flexible to be managed

Table 7.34: Focussed Coding No. 2 for Interview Question 6

Sub-Theme	Better alternative on part of customer
Interview No	Remarks
Interview 2	Bank sharing higher risk compared to BBA Withdrawal flexibility offered
Interview 4 and 5	Developer will become more responsible in future Easy to determine the principle amount due in the case of early termination; no issue of rebate
Interview 7	Variety of Islamic home financing product
Interview 11	Short period of financing compared to BBA No issue of <i>ibra'</i> as the bank only claim the balance of principle amount at the point of time and not including rental Cheaper compared to BBA
Interview 13	Bank is sharing higher risk
Interview 15	No payment during construction period

Table 7.35: Focussed Coding No. 3 for Interview Question 6

Sub-Theme	Better alternative from shariah implication
Interview No	Remarks
Interview 5	Accepted nationally and internationally
Interview 9	Move away from contentious issues in BBA
Interview 12	No more <i>Inah</i> or BBA (to certain extent). Suitable for house under construction, no issue of <i>gharar</i> . Better alternative if genuinely applied in accordance to <i>Shari'ah</i> principles, otherwise more issues to be considered
Interview 13	Moving away from <i>Inah</i>
Interview 17	More <i>Shari'ah</i> compliant compared to BBA
Interview 18	MM is now replacing BBA
Interview 19	Better alternative as the BBA is very contentious due to court cases

Table 7.33 highlights the views articulated by the interviewees that MM is a better product for the bank due to its nature of floating rate used. This situation will make it easier for the bank to manage the funding issues compared to a fixed based financing particularly when it involves long term financing. In addition, Table 7.34 shows the responses that MM can also be considered to be a better alternative on part of the customers, because bank is sharing a higher risk compared to BBA. Also, there is variety of Islamic home financing products available to the public with the withdrawal flexibility offered by certain banks. Moreover, on the basis of *Shari'ah* point of view, Table 7.35 shows the interviewees responses on the implementation of this new product considering this as a great attempt to move away from BBA and *inah* as well. However, some interviewees held that this new product in the form of MM can only become a better alternative if the *Shari'ah* principles are genuinely applied since a deviation from, will trigger more *Shari'ah* issues.

This interview question 7 aimed at expanding the discussion into the acceptance level of MM among the banks and their customers, which reflects on the future prospects of MM home financing in Malaysia. As can be seen in Table 7.36, two themes were derived from the responses given by the respondents, which provide various determining factor on banks' and customers' acceptance of this product. Their level of acceptance and factors associated to it, were significant to determine the future of MM home financing product.

Table 7.36: Data Analysis for Interview Question 7

Interview Question 7	<i>From your opinion, to what extent has MM been accepted by the bank and banks' customer?</i>
Focussed Coding	Sub-Themes/Remarks
1	Factors in determining banks' acceptance <ul style="list-style-type: none"> • Higher risk weightage • Adequate legal protection • Phasing out from Inah • Variety of product offered to public • The formula is same with conventional
2	Factors in determining customers' acceptance <ul style="list-style-type: none"> • Understanding the product • Familiarity to the product • Only concern on rate, instalment and tenure not the product • Flexibility of product • Religious concern- no riba involve
Concluding Theme	<i>The responses from the interviewees show that MM home financing is well accepted either by the banks or the customers, however the factors in determining their acceptance are different based on their needs.</i>

As can be seen two focused coding developed in question 7, as in Table 7.37; and the details of these two focused codings are presented in Tables 7.37 and 7.38.

Table 7.37: Focussed Coding No. 1 for Interview Question 7

Sub-Theme	Factors in determining banks' acceptance
Interview No	Remarks
Interview 2 and 3	Higher risk lower acceptance
Interview 4 and 5	Following global standard of accepted product
Interview 7	More product to offer
Interview 9	Funding issue; floating rate Move away from BBA Higher capital risk weightage No certainty in term of legal protection; as the case have yet been brought to court
Interview 10	Profit motivation; majority banks get recourse from customer on the case of shortfall
Interview 11	Whether the legal protection is adequate to protect bank's interest Whether MM would attract higher risk weightage
Interview 12	To date, only 7 banks offer MM MM can become variety of product to be offered to customer
Interview 13	Become alternative to move away from <i>Inah</i>
Interview 14	The formula under MM as same as conventional; make use of existing system for certain banks They will offer MM if they want to roll out the product
Interview 15	Higher risk in MM compared to BBA
Interview 18	The formula used is as same as conventional

Table 7.38: Focussed Coding No. 2 for Interview Question 7

Sub-Theme	Factors determining customers' acceptance
Interview No	Remarks
Interview 4 and 5	Concern on rate
Interview 7	No more selling price
Interview 9	Flexibility of the product offered Religious factor Rate of MM is competitive compared to BBA
Interview 10	Depend on rate offered; not the product itself
Interview 11	If they understand how MM operate, they would prefer it They are confident with the product which they are familiar with
Interview 13	Educating the customer is important
Interview 14	No issue on rebate
Interview 15 and 16	More concern on instalment, rate and tenure
Interview 17	Marketing and educating the public is important Look beyond <i>Shari'ah</i> decision

As mentioned earlier, there are several factors which affect the level of acceptance of the banks and banks' customers to this new home financing product as presented in Table 7.36. Table 7.37 shows that the level of acceptance by the banks are affected by factors including higher risk weightage, adequate legal protection, phasing out from *Inah*, variety of product offered to public and the formula is similar to conventional ones.

In addition, Table 7.38 shows the factors which influence the acceptance level of the banks' customers related to the level of understanding on the product, familiarity to the product, concern on rate, instalment and tenure, flexibility of product and religious concern as no *riba* involved.

7.3 INTERPRETING THE FINDINGS: CRITICAL ASSESSMENT

This section provides an interpretative discussion on the findings based on the data analysis in this chapter. It is organised according to the four research objectives in a thematic manner.

7.3.1 Operating Mechanism of Islamic Home Financing Based on MM

The analysed data have established that most of the interviewees perceive MM as a new product of home financing that combines several contracts namely *musharakah*, *ijarah* and sale contracts, which are determined and shaped by certain *modus operandi*.

In relation to the *modus operandi*, the interviewees described that in an actual operation, the customer pays a certain amount of deposit to the developer, and later he approaches the bank for home financing. MM home financing takes place when the bank approves the customers' home financing application and the former pays the remaining price of the house to the developer. This creates a partnership between the bank and the customer. According to this partnership, the former owns 90 percent of the shares while the latter owns 10 percent of the shares of the house. During this stage, the parties enter into a partnership agreement in order to legalise the process.

As the practical explanations provided by the interviewees, since the intention of the customer is to stay in and eventually own the house at the end of the financing period, a leasing arrangement then is made whereby the bank gradually, leases out their portion of the house to the customer and he pays a monthly rental, which constitutes a profit to the bank.

The third stage is the sale contract, whereby MM is structured as reducing balance or diminishing partnership. This means that the banks' shares in the partnership will be reduced throughout the partnership and that is by virtue of customer undertaking to gradually purchase the banks' shares in the property throughout the financing tenure.

As can be seen, the leasing contract and sale contract indeed take place concurrently whereby the monthly instalment typically divided into two portions: one portion goes to the rental and; another portion goes towards the purchase of the banks' shares. For example, the customer pays RM1, 000.00 per month, from this amount RM999.00 goes to rental and RM1.00 to the purchase of the banks' shares. For the next month RM998.00 goes to rental and RM2.00 goes to the purchase of banks' shares. This process continues throughout the financing period, thus the balance which goes towards rental get lesser, because the bank's portion on the property is reduced and the portion of the house owner through purchasing the banks' shares increases. Finally, at the end of the financing period, the customer would become a full and sole owner of the house and by that time the lease will end, because lease can only occur when the bank still owns certain portion of the house for which the bank charges rental to the customer.

In examining the structure or the form of MM home financing, therefore, particularly having several *Shari'ah* contracts are combined and translated into practice to provide one particular home financing contract to the customer is a clear indication of unique features of this product. It is this particular nature, which makes MM home financing absolutely different than BBA home financing. In other words, the *modus operandi* explained above successfully proves that MM is not a typical BBA, whereby the latter is perceived as *inah* contract which merely involve the sale and buy back transaction. Based on this ground, it is mainly the reason most of the interviewees viewed that the implementation of MM home financing is because of the attempt to move away from BBA home financing that is dotted with various controversial issues.

Although the implementation of MM home financing clearly indicates a move away from BBA, it does not necessarily mean of phasing completely out from debt based financing. The main reason obviously can be seen from the name of the product itself and the principles of contracts applicable in it. Albeit the word *musharakah* is defined as partnership, which is equity instrument in nature, the word *mutanaqisah* on the other hand, connotes the meaning of diminishing which is designed to be perfected by two distinct debt-like instruments namely

‘leasing’ and ‘sale contracts’. As such, MM home financing is indeed not a pure equity contract, but rather it is a combination of debt and equity contracts.

Although the contracts involved are not purely equity financing, the requirement for the product to observe the unique features of each contract applicable, should be given paramount consideration. For instance, how far the terms of partnership principles are strictly adhered to in order to reflect its equity financing part and how far the terms and conditions for *ijarah* and sale are kept to in the implementation of this home financing product. Failing to strictly observe these requirements may lead to various issues and problems regarding the implementation of this product particularly from *Shari’ah* perspective.

In other words, the principles relating to partnership in the MM contract should at least be observed in order to warrant ‘equity implications’ between the contracting parties. Realising the principles of partnership or equity part of the whole financing is very important which is often considered to be the preferred Islamic mode of financing because it adheres most closely to the principle of profit and loss sharing. To reiterate, profit and loss sharing concept has considerable implications at the macroeconomic level, as such arrangement will play an important role in greater economic development particularly for the Muslims.

Reliance on equity financing is expected also to bring more justice to the parties, as it brings more equitable distribution of credit with the objective of eliminating poverty and reducing inequalities of income and wealth, and less vulnerable to business cycles as the level of risk is spread between the contracting parties with their respective participation or capital and the risk is indeed undertaken to justify return or profit. Importantly, it also helps those who cannot normally afford to have a capital base to be the stakeholder in the society. In addition, it will also help introducing a greater discipline into the financial system, for instance, if the bankers participate in the risk, they will also be motivated to evaluate loan applications more rigorously. Such discipline in the financial system should help reduce funds available for speculation, and unproductive spending, and control excessive expansion of credit and living beyond the means by both public and private sectors.

Apart from that, equity financing is also perceived to reflect *maqasid Shari’ah* which promotes justice for all the stakeholders. According to *maqasid* approach, the primary aim of the *maqasid Shari’ah* is to secure benefit and repel harm or injury. Therefore, the products

should be engineered in the way that it complies with the *Shari'ah* objective. Therefore, Islamic banks are expected to provide the service and offer the products that can repel the harms commonly found in the conventional interest based financial products. The Islamic banking product will not reflect the spirit of *Shari'ah* if these harms cannot be eliminated and cause injustice to the parties, which is the main principle is and should be considered in product development and survival.

Following this argument, the practice of MM in Malaysia should therefore be capable to repel the harm as commonly practiced in conventional banking system. For instance, Chapra (2011) and one of the interviewees view that if a default or failure of repayment caused by the customers is due to strained circumstances, Islam recommends not just rescheduling, but even remission if necessary. In the case of auctioned property, the bank should to a certain extent, take a risk of loss, if any, according to their proportionate shares. Hence, if this element of equity financing can be fulfilled in the MM product, it will lead to an increased demand for Islamic product. Yet, in the reliance on equity and profit and loss sharing on the basis of its inherent advantages over other financial alternatives and therefore create a healthy balance between debt based and equity based financing for the prosperity of the economy and society, as the economy with highly reliance on debt will cause a high risky economy that links to the global crisis.

7.3.2 Legal Framework and the Adequacy of Current Law Governing the Application of MM Home Financing in Malaysia

Based on the findings and the provided information in the interview analysis, this section discusses the legal framework on how MM home financing is legally operated in Malaysia and whether the current state of legal framework is adequate to govern its operation. The preceding data analysis revealed that the MM home financing in Malaysia is conceptually based on Islamic principles, but its legal operation is based on conventional principles of laws with the spirit of debt financing being dominant.

It is further revealed that there are mixed responses on the adequacy of current laws to govern the operation of this product. Some of the interviewees held that current law is adequate. However, further amendments maybe necessary to improve the whole legal structure to achieve a true meaning of equity financing. On the other hand, as indicated above, some of

the interviewees held that the current state of law is completely inadequate requiring new law to be enacted for the MM home financing to take effect.

It is apparent in the previous section that the *modus operandi* of this home financing product is based on several *Shari'ah* contracts. The application of hybrid contract of equity and debt instruments namely partnership, *ijarah* and sale to form the entire process of home financing is inevitably a successful translation of *Shari'ah* concept of *muamalah* into a reality. As such, based on this premise, it is no doubt that a majority of the interviewees held that MM home financing is conceptually based on Islamic principles.

Unfortunately, in terms of its legal operation, most of the interviewees viewed that legal operation of MM home financing is based on conventional principles of law with the spirit of debt financing is still prevailing. It is argued that this is the result of the current state of legal framework in Malaysia governing the banking system as a whole, which is conventional in nature. The fact of having dual banking system, in which Islamic banking exist side by side with the conventional counterpart, may to certain extent reflect the spirit of debt financing in this product. Moreover, the Malaysian legal system is in fact, not duly in place to accommodate the equity financing which is regarded as relatively a new home financing product. Although there is a specific statute regulating the establishment and the operation of Islamic banks in Malaysia, which is the Islamic Banking Act, it remains as the only regulatory body without specifying any statement of substantive law to be applied in cases of a dispute.

This indirectly creates a real challenge for the practitioner in Islamic banking system, when preparing legal documentation for Islamic banking contracts particularly in the case of MM home financing contract. They may have to ensure that the documentation must be *Shari'ah* compliant and is accord with other civil laws which are Malaysian law generally, and also enforceable before the court of law. In particular, with regard to civil laws, the practice of this new home financing product employs additional legal safeguards such as 'trust', 'caveat' and 'charge' in order to protect the banks' interests.

While discussing the application of certain legal safeguards to the banks, it is also worth mentioning that although from the *Shari'ah* perspective the co-purchase of the house by the customer and the bank is actually accorded ownership partially to the bank, these additional

legal safeguards are utilised to defend the right for the bank in the context of Malaysian land law. In other words, while the basic concepts used in this product are based on *shirkah*, *ijarah* and sale, these legal instruments. However, are employed to further safeguard the rights of the banks particularly. Without employing these statutory legal safeguards, the interests of the contracting parties remain contractual in nature, with no statutory certainty in which the banks feel vulnerable. Based on this ground, it can be argued that due to the need to address the current structure of the legal framework to become enforceable before the court of law resulting in MM home financing being viewed as operationally conventional.

It should be noted that this current practice, however, remains uncertain, since no cases yet to be brought before the court to challenge the legality of MM home financing implying that the MM home financing product has not been tested within the legal system yet. It can indirectly also be considered as a legal risk posed by the Islamic banks whereby it is indeed further aggravated by the prevalent role of the *Shari'ah* scholar of the banks in approving the products and services. In order to have a product, which carries the spirit as well as the word of *maqasid Shari'ah*, *Shari'ah* scholars should be expected to be able to raise possible issues and challenges related to the value chain in MM, particularly in the operational sides of the products offered. In other words, the function of *Shari'ah* advisors are not only to endorse and approve the banks' products, but also to ensure their compliance through directing, supervising and importantly reviewing its operations. This is consistent with the AOOIFI standards, as the *Shari'ah* advisors are primarily specialised jurists in the *fiqh muamalat* and Islamic finance, who are entrusted with the duty of directing, reviewing and supervising the activities related to Islamic finance to ensure they comply with *Shari'ah* rules and principles.

However, current practice of *Shari'ah* scholarship is away from such a position as they mostly seek for the maximisation of the banks and financial institutions as opposed to the customers. In supporting this, the opinion of one of *Shari'ah* advisor among the interviewees can be referred, as she clearly mentioned that not many *Shari'ah* advisors have expertise or skill in looking the contract to determine the operational side of the product, as their background is either limited to *Shari'ah* or economics. Hence, they tend to approve the products solely based on structure or principles, without a detailed examination of the contracts. It can therefore be concluded that MM home financing contract appears to contradict with the equity principles of *maqasid al-Shari'ah*, as it contains more of debt financing over equity financing, which brings it close to the conventional products.

It should be reiterated that it is rather unfortunate that despite the constant reference being made to the importance of *maqasid Shari'ah*, in practice, Islamic banks do not pay much attention to such an essential principle, and only realise to consider on it only after the issue strikes them. In other words, there is no proactive measurement to be taken earlier by the most of Islamic banks. So far banks have unable to escape the trappings of conventional finance with great emphasis on debt financing system motivated with profit maximisation alone without having consideration to social welfare.

On the issue of an adequacy of current legal framework in governing the operation of MM home financing, there are various responses from the interviewees. To reiterate, some of the interviewees with professional banking background held that current state of legal framework is adequate for the operation of this home financing product. However, they agreed that further improvements or amendments to the current legal structure may be needed in order to improve the whole legal process in relation to MM home financing product, with the objective of providing certainty or recognition to their approaches and dealing with the current state of MM home financing. On the other hand, some interviewees with the *Shari'ah* advisory or non-practitioners background viewed that current legal framework is completely inadequate to govern the operation of this new financing product. This argument based on fact that MM contract is indeed a unique equity financing with unique features that requires specific statute to govern its operation which can be capable of giving true spirit of equity financing.

The divergence of the opinions on this issue indirectly demonstrates the nature of the potential problem. However, it is certain that in absence of this proper and specific statute, operation of MM home financing with the legal structure based on conventional finance, the spirit of debt financing remains prevalent in the construct and operation of MM. Turning to the practitioners' perspective, since the bankers are familiar with the conventional system with its established rules and policies, for them the operation appears to be much easier in practice. Following this argument, the current state of legal framework which is conventional in nature is perceived to certain extent to be adequate for MM with merely some modifications to suit the current conventional system in order to justify the operation of this new Islamic home financing product.

It is also worth mentioning that albeit different responses on this issue voiced, all of the interviewees shared the common views that ‘something need to be done’ for the betterment of the current legal framework for the operation of this home financing product irrespective if it involves the amendments to existing laws or enactment of a new statute to govern its operation. Hence, consistent improvement and amendment to the legal framework will ensure the development of Islamic finance particularly for the equity financing, whereby it might be necessary to establish different legal and regulative structures for the operation of Islamic finance. In other words, different treatment and consideration must be given to legal nature of Islamic structures on various issues, such as owner liability, the consequences of default and what happens in the event of loss or destruction of the assets.

In addition, there is indeed an attempt made by the Central Bank of Malaysia for the formation of Law Harmonization Committee, which is entrusted with the duty to ensure parallel developments between Islamic finance and conventional system. Besides, the most recent development of Malaysia’s legal infrastructure for Islamic finance was the enactment of the Central Bank of Malaysia Act 2009, whereby it accord formal recognition to the dual financial system practiced in Malaysia. However, this might also imply that during harmonisation process Islamic finance related products may need to compromise, which has resulted in certain level of criticism raised against Islamic finance.

It should also be noted that it is a need for further research exclusively on legal framework of MM home financing focusing on whether there is a real need for a new statute for the operation or mere amendments on the current legal framework would be sufficient for its operation. To accommodate this, qualified pool of talent remains the valuable asset in order to support the development of Islamic finance being closely attached to the spirit of *Shari’ah* and capable to uphold justice for the economic development particularly for the Muslims as a whole. Thus, it is hoped that the implementation of MM home financing would become an impetus for further reliance to equity financing in Islamic finance particularly in Malaysia.

7.3.3 Issues and Problems in the Implementation of MM Home Financing in Malaysia

This section aims to critically discuss the issues and problems faced by the Islamic banks and the customers for the implementation of MM home financing in Malaysia through the findings of the interview analysis, which revealed that there are a number of crucial issues and problems relating to the provision and conceptual nature of the facility. For the purpose of clearer discussion, this section is divided into two following sub section.

7.3.3.1 Legal, *Shari'ah* and Operational Issues in the Implementation of MM Home Financing in Malaysia

The previous data analysis clearly shows that there are various focal issues relating to the conceptual nature of this home financing product, which are also expressed by the interviewees. These conceptual issues can be divided into three parts: legal, *Shari'ah* and operational issues.

(ia) Legal Issue: Ownership

Ownership appears to be one of the pertinent legal issues, which is highlighted by most of the interviewees. The data revealed that the current legal structure does not allow for the registration for both owners, and therefore legal ownership is normally on the customer, thus the bank remains as a beneficial owner and the interest of bank is further safeguarded by creating a charge over the property. This practice is indeed remains prevalent in most Islamic banks offering MM home financing product except for Kuwait Finance House (KFH) whereby the name of KFH is registered as the legal owner of the property and hold the property on trust to the customer. Hence, it is important to investigate further by examining the reason for this practice.

From the perspective of *Shari'ah*, *musharakah* itself connotes the meaning of partnership whereby the ownership of the property is shared between the parties through the co-purchase of the property. However, when it comes to legal perspective, current legal framework in Malaysia particularly National Land Code (NLC) is not in place to accommodate such arrangement for equity financing, which makes it impossible for the registration of both parties in the legal title. In other words, joint ownership per portion *per se* is not strictly provided for joint ownership, as the nature of changing ownership per portion in MM home financing is also not catered under the NLC. For instance, it is rather impossible for the ownership registered in the land office to reflect monthly change of ownership per portion as

NLC only recognise half and half portion by the co owners. Having this constraint, the parties have to choose whose name to be registered as the legal owner and whose name becomes the beneficial owner. According to prevalent practice nowadays, with the exception to KFC, the banks typically allow the customers' names to be registered as the legal owner, whilst the banks become the beneficial owner through which their interests are further safeguarded by creating charge over the property.

This approach remains prevalent as Interviewee 11 highlighted that at least one of the banks which carried out a survey with the customers in doing this financing to see whether it would be attractive to the customer if the asset is registered under the bank's name. For the Malaysian customer, the house should be registered under their name rather than under the banks' name when they get a house financing, although the house later can be charged to the bank. As such, due to this marketing strategy, the banks find it not attractive to ask for both the names to be registered. This explains the reason why most of the banks offering this home financing product allow the customer to register their name as the legal owner with the understanding that the customers hold the legal title in trust to the bank as a partner and beneficial owner.

Apparently, the root of this issue is related to the previous discussion on the legal framework and its inadequacy. As a result, this problem is expected to remain until and unless there is an improvement to the current legal framework to recognise Islamic structure of home financing based on *musharakah* particularly. To reiterate, land legislation in Malaysia does not capture with the development in Islamic finance generally and in particular it does not recognise *musharakah* structure. Moreover, amendment to the land legislation is not an undemanding endeavour as these matters fall under the jurisdiction of each and every state and not under federal government jurisdiction, with the exceptions to several states. However, with the continuous support by the government and the society together with a political will for Islamic finance, it is hoped that the amendment is no longer impossible, as the amendments to other laws to accommodate Islamic banking is really has been underway for sometime as observed in the case of stamp duty and income tax treatment.

(ib) Legal Issue: No Standardization of the Documentations

Previous data analysis revealed that there is no standardisation of the documentations used in offering this home financing product though basic principles remain the same for the banks. This problem indeed is a recurring issue since the application of Islamic banking in Malaysia. Term and conditions in MM home financing are typically designed by lawyers on the basis of the *Shari'ah* requirements and conventional requirements, to be enforceable before the court of law. Since the business decision for each and every bank is different, they finally produce different documentations, without compromising to the *Shari'ah* requirements.

Hence, it is really hoped that there should be an effort to provide a common platform for the industry to rely on, especially regarding legal agreement as legal documentation and standardization are also key issues for further development of Islamic finance. In Malaysia there are also attempts made by the Central Bank of Malaysia to provide general *Shari'ah* parameters for the Islamic products particularly for the MM home financing product. Thus, it will indirectly capable of promoting standardization in legal agreements. In relation to this situation, reference can be made to Interviewee 11 who stated that Central Bank of Malaysia does not provide details for each contract of legal agreements in order to avoid any liability in the future. More importantly, without compromising the *Shari'ah* principles, in order to mitigate any potential legal risk in the future, the contracts should be written very carefully to minimise potential disputes.

(ic) Legal Issue: Event of Default

Another important issue revealed by the previous data analysis is the process how the banks treat the customer in the event of default. The procedure is typically treated same as conventional loan. Based on the interviews, there are two approaches adopted by the bank in the event that the price of property sold during the auction is not enough to cover the banks' cost. The first approach is where the bank seeks recourse from the customer which is the prevalent practice, and second is where banks just absorb the loss without seeking any recourse from the customer. The former approach indeed triggers some *Shari'ah* consideration; since the contract itself is *musharakah* in nature. Hence, based on this contract, instead of seeking recourse from the customer, banks are expected to bear the loss with the customer in the event the property is sold under value.

Apparently, from the literature, standard safeguard against loss such as default mechanisms is the inherent characteristic of conventional banking. However, it is rather unfortunate that most of the banks seem to be familiar with the conventional system and debt based financing, thus make it difficult to realise the spirit of *musharakah* contract into practice, particularly in the event of default cases.

(ii) Shariah Issue: *Wa'd*

As been discussed earlier in the analysis of data, *wa'd* or unilateral promise exists in two circumstances. First, is to ensure the customer is able to honour his/her promise to continuously purchase the shares of the banks until the end of the financing tenure. Second, to ensure the customer purchase all the outstanding shares of the bank in the event of default. Failure to fulfil such promise in the case that the customer is unable to provide a full repayment more than three months, this will trigger indebtedness on part of the customer, which will result in the bank selling the property under auction and get the money back.

Hence, the use of *wa'd* in the MM home financing contract is designed to guarantee the interest of the banks, which however runs against the spirit of equity financing as this encourage the parties to share the loss according to their shares. In supporting this, Interviewee 12 also stated that the application of *wa'd* in MM home financing would trigger *Shari'ah* consideration particularly for the equity financing.

(iii) Operational Issue: *Rental*

As an operational issue, the main issue of rental is because it is benchmarked against based financing rate which is conventional in nature. Most of the practitioners believe that the benchmark against based financing rate is important due to the element of competition.

The issue of rental in MM home financing is rather unique, because essentially the real amount of rental ties to the value of the property, in which rental is determined through several factors namely location, size and type of a property. However, putting based financing rate as a benchmark to the rental would delink it from the real value of property which eventually capable of creating more bubbles leading into financial crisis as happened in conventional mortgage. Furthermore, linking rental with a real value of property would make this product more close to the teaching of *Shari'ah* in promoting justice, because if there is different amount of rental in different location with different type and size of

property, it would help under privileged people or the people who live in the village to get a lower amount of rental compared to the people who afford to live in the city by paying higher rental. In addition, linking rental with real value of property may also make the Islamic mortgage based on MM cheaper compared to conventional mortgage as some of the interviewees opined that market value for rental is a lot lower compared to based financing rate.

7.3.3.2 Banks' and Customers' Problems in the Implementation of MM Home Financing in Malaysia

The analysis based on the interviews indicated that there are a number of problems relating to the provision of MM home financing faced by the banks and banks' customers. Problems in the provision of this product faced by the banks include: risk weightage, additional administrative work, additional IT system, no standard parameters, uncertainty of legal framework, *shari'ah* requirement vs business decision, equity financing vs debt financing, and lack of marketing. Besides, the problems faced by the customers include: lack of knowledge on the facility and perception towards charge taken by the banks over the property.

Based on the preceding analysis, it is impliedly suggests that the problems highlighted by the bankers are mainly due to legal protection and business capital or pecuniary in nature. On the other hand, *Shari'ah* scholars and Islamic economists are mainly concerned with the problems of the banks' failure to realise the spirit of equity financing and public knowledge on MM home financing. In other words, different concern by the bankers and the *Shari'ah* scholars in implementing this new home financing product is a reality. The banks as a financial institution is more concerned with profit maximization, while *Shari'ah* scholars and Islamic economists are more concerned in ensuring that the label of *Shari'ah* compliancy is only applied to those products where the substance of the transaction does not violate the various prohibitions and where the ends of the transaction are consistent with the underlying ethical basis of *Shari'ah* financing.

The core of the problems is indeed due to Islamic banks often operating in a business environment where laws, institutions, attitudes, rules, regulations and norms serve for an economy based on interest. As such, it is apparent that the problems relating to legal framework to govern the implementation of this new home financing product faced by the

bank would only be able to be tackled via continuous improvement to the relevant laws as been discussed earlier. In term of the additional cost on part of the bank, some regulators take the view that, since Islamic banks are conducting a new and unexplored financial pursuits with illiquid assets, they should perhaps have a greater safety margin than conventional ones, which require the banks to increase a capital while offering products with higher risk like MM. Apart from that, additional costs may also due to this new product requiring various legal agreements to be drafted in executing partnership, leasing and sale contracts between the parties. Therefore, it is hoped that standardization will diminish this additional cost in preparing the documentations in the future.

Then, the problem relating to customers' lack of knowledge in the provision of MM would also cause enormous challenge to the banks. It seems difficult for the Islamic banks to penetrate into a market which has been already occupied by the long-established conventional mortgage product. This is particularly true in the case of mortgage whereby conventional mortgage as already established its name and reputation for so long in the market, implying that the customers are familiar and have confidence in the conventional product. The problem is further exacerbated especially when many customers still perceive Islamic mortgage being really no different than the conventional products. Similarly, the estates agents and the bankers are more accustomed with conventional mortgage mechanism. Besides, with lack of religious conscience, they may opt to offer customer the conventional product instead of Islamic one, not only because they are familiar with the conventional transaction and mechanism but also they feel conventional product less complication and more convenient.

Knowledge and understanding of Islamic banking products particularly MM home financing would be the most important key for the development of Islamic finance. Without proper understanding, the practice would remain as mere adapting or substituting the conventional system as happened in almost debt-like instruments offered by the banks. For instance, putting a collateral for example charge as practised by most of the banks in offering MM home financing, is obviously perceived as conventional characteristic for which the loan is only based on creditworthiness and not favour to under privileged people. This indeed runs against the spirit of Islamic economic model that emphasises fairness and justice.

In other words, the bankers especially, should equip themselves with the Islamic banking knowledge and mechanisms to further appreciate the unique wisdom of Islamic finance,

particularly on the equity financing. Proper implementation and proper understanding of Islamic products would enable the bankers to increase the awareness and knowledge on part of the customers, especially on the capability of Islamic finance to remove harm observed in conventional counterpart, and promoting justice to the society as a whole, in accordance with the teaching of Islam. More importantly, it is believed that the future of Islamic banking lies in the idea not to sell Islamic products to only Muslims, but rather to sell them to anybody, on the basis of inherent advantages including ethicality over other financial alternatives.

7.3.4 Banks and Customers' Acceptance and Future Prospect of MM Home Financing in Malaysia

(i) Future prospect (better alternative) of MM home financing

The discussion in this section highlights how MM home financing can become a better alternative compared to BBA home financing. The findings derived through data analysis revealed that there are several factors determining future prospect of this new home financing product.

It should be noted that this new home financing product inevitably, to certain extent, becomes a better alternative for the banks, customers and even gained more *Shari'ah* recognition or acceptability compared to BBA home financing. As for the banks, on the basis of funding issue, the nature of MM which is based on a floating rate in nature make it more manageable compared to fixed rate particularly for long term financing. In other words, the banks no longer have to have to a hedging mechanism to forecast their profit in the future particularly when it involved a long term financing like home financing which normally last about 30 to 40 years of financing tenure, which typically results in overpricing the property, thus making it less attractive and competitive.

As regards to customers, MM home financing is a better alternative for them because the banks are now sharing higher risk compared to BBA, particularly in the case of abandoned housing projects where the bank will give back all the payment received during the construction. In addition, with this new home financing product, some banks offered withdrawal flexibility where the customers, with the banks' leave or permission, may sell back the shares to the banks and enjoy the return during the financing period. Besides capable of offering a variety of home financing products, the banks also offer cheaper price for the

property compared to BBA, since there is no longer the issue of getting a rebate from the banks particularly in the case of default.

Furthermore, from *Shari'ah* viewpoint, MM home financing can be a better alternative due to its acceptability by all the Muslim jurists and indeed it shows great endeavour by the banks in Malaysia to move away from *inah* contract as practised in BBA home financing. The spirit of *Shari'ah* in this new home equity financing product can easily be realised if the implementation is genuinely done in accordance with *Shari'ah*, particularly where the requirements for partnership contract as part of a whole contracts is strictly observed.

Therefore, the implementation of MM home financing, if properly implemented in accordance to *Shari'ah* principles particularly with the spirit of equity financing, not only will gain better recognition from *Shari'ah* viewpoint but can also become better alternative for the banks and the customers. Furthermore, failure to provide products in line with *Shari'ah* will defeat the very purpose behind the existence of Islamic banks and will eventually lead to difficulties in retaining current customers and attracting new ones. Besides, future successful marketers of Islamic financial products will be those who identify and anticipate the evolving needs of the consumer and pioneer product through innovations.

(ii) Banks and Customers' Acceptance of MM Home Financing

Majority of the interviewees viewed that MM home financing has been well accepted by the banks and banks' customers. Considering the existence of this product is just about five years of time, recently there are 7 of the 21 Malaysian Islamic banks offer this new home financing product. The bankers also confirmed that, subject to proper marketing and awareness campaign, MM are well accepted by the banks' customers.

The findings from interview analysis shows that there are several important factors which determines banks' acceptance relating to risk weightage, legal protection, capable of moving away from *inah*, variety of product and the formula used in this new home financing. On the issue of capital requirement, since partnership contract is considered equity financing, it involves a higher risk for the bank and, therefore, a higher risk weightage requires the bank to allocate more capital which eventually may add cost to the bank. As such, this new home financing product may be less attractive for the banks with a capital constraint.

Adequate legal protection is also very important to determine banks' acceptance. It is clearly understood that the banks as financial institutions would require certainty in safeguarding their interests in each contract they enter into. Hence, as discussed in the previous discussion on the governing law, the need for an adequate legal protection is crucial to attract more banks offering MM home financing in future. In addition, in order to be accepted globally particularly in the Middle East countries, Islamic banking industry particularly in Malaysia is now phasing out *inah* contract as practised in BBA. Consequently, MM will appear as a superior factor for more Islamic banks to offer this new home financing product. Besides, it can also contribute to the product variety in Islamic home financing which can result in further competitiveness.

As for the customers, particularly the Muslim customers, they need to be informed about MM home financing. Most of the interviewees stated that, besides religious factor, the customers are only concerned with the rate, amount of instalment and tenure of the financing without having knowledge about the uniqueness of the Islamic products offered. As such, there is a crucial need for the banks to promote knowledge and awareness of their products among their customers by employing internal marketing strategies. This awareness is an important tool as Islamic banks strive to develop close relationships with individual and business clients. They might thereby gain a competitive advantage based on offering a superior customer relationships, and at the same time gain insights, through customer collaboration and feedback, into customer needs and expectations.

Education and awareness programmes will generate a higher demand for Islamic financial products, which can help to respond to the requirements of better informed consumers. This would also help Islamic banks craft specific strategies aimed at capturing unexplored market segments. Collaboration efforts between Islamic banks and conventional banks could bring Islamic products to the mass-market and ultimately develop global distribution capabilities. The IT revolution might also help the Islamic institutions, creating new information portals enabling them to deliver products to consumers through different distribution channels at reduced cost and competitive prices.

Thus, advances need to be made on a number of fronts: A qualified and skilled workforce well versed in both *Shari'ah* and modern corporate financial management is indispensable for innovation. In addition, widening the product range calls for substantial and continuous

investment in research and development. In this context, an industry-sponsored research and training institutes are essential: for instance in Malaysia, the Islamic Banking and Finance Institute Malaysia has been established to undertake collaborative research with academics at the Malaysian universities aimed at developing unique and innovative Islamic financial offerings across Malaysia. Hence, many institutions have been established to support Islamic finance, it is hoped that on the whole the future looks bright for the industry.

7.4 CONCLUSION

This chapter has analysed the issues and prospects of MM as a new Islamic home financing product available in Malaysia, through interview survey with the respondents who were directly involved in the implementation of this new product. In line with the research objectives and research questions of this study, the interviews with 19 respondents were analysed through four important themes.

These themes include the operation of MM home financing by the providers particularly the bankers, then the second area is on the issue of how MM is implemented in the Malaysian legal framework of dual banking system, and the adequacy of the current law governing this new product, the issues and problems faced by the bankers and customers in the implementation of this home financing product and lastly the acceptance of banks and customers as well as future prospects of MM home financing in Malaysia.

The preliminary findings from the analysis concluded that the implementation of MM involved the combination of various *Shari'ah* contracts namely *musharakah*, *ijarah* and sale. This home financing starts with the *musharakah*/partnership contract entered into by the customer and the bank to jointly own to acquire property by paying 10 percent and 90 percent of the house price respectively. Subsequently, the bank will enter into leasing agreement with the client, by leasing its portion of shares to the client. Consequently, gradually the customer redeems bank's shares construed as a sale contract. The customer buys the shares from the bank based on schedule agreed by the parties which make the banks' shares gradually diminish and the customers' shares gradually increase until he/ she will become the sole owner of the property at the end of the tenure.

Besides, the analysis also concluded that albeit MM is conceptually based on *Shari'ah* contracts, its implementation are based on conventional system with the element of debt based financing being dominant. This happens due to certain legal safeguards which were available to the banks were actually conventional in nature such as, caveat, trust and charge. Those safeguards which were used to protect the interest of the bank particularly were derived from the civil laws, making it based on debt based financing.

The analysis also concluded that the banks indeed faced various issues and problems in implementing this new home financing product. The issues highlighted include maintenance and *takaful*, use of unilateral promise (*wa'd*), event of default, and rental. The implications of these legal, *Shari'ah* and operational issues remain uncertain and have blurred the practice of MM as it is a new product and there has not been a single case brought before the court of law. In addition, there were also various problems faced by the banks in implementing this new product, which include the investment constraints, uncertainty of legal protection and an increase of risk weightage on part of the bank. These problems indeed explains as to why there were only seven banks out of twenty one Islamic banks offering MM home financing.

Apart from that, the analysis concluded a positive future for the MM home financing, which has been well by banks and customers. The main significant factor determining the acceptance of this product is the attempt to move away from BBA or *inah*, which is not accepted by the Muslim jurists particularly in the Middle East countries. As such, the future prospect of MM as a new Islamic home financing is very promising as it is capable of overcoming certain contentious issues available in BBA home financing.

To conclude, through meticulous analysis and discussion, this study shows that MM home financing in Malaysia is relatively a new product of home financing with the element of equity financing. Since this is the first ever product of equity financing for retail market, there are a lot of issues and problems ranging from the provision to the conceptual nature of the facility. However, in light of the current support by the policy makers in marketing Islamic financial products, it is hoped that there would be continuous attempt to improve the facility in future, and eventually the reliance on equity financing would increase due to inherent benefits associated with it, which is consistent with the underlying ethical basis of *Shari'ah* financing for the benefit of the society as a whole.

This chapter has contributed in understanding the issues and prospects of this new home financing product from the real situation. The analyses will certainly render valuable contributions to the practice of IBF in Malaysia particularly. To support the findings established in the study through interviews, the following chapter focuses on the perceptions and opinions of the participants representing the demand side.

CHAPTER 8

EXPLORING CUSTOMERS' PERCEPTION AND EXPECTATIONS ON ISLAMIC HOME FINANCING IN MALAYSIA: QUESTIONNAIRE ANALYSIS

8.1 INTRODUCTION

This chapter discusses the research findings based on the data gathered from the questionnaire survey process, as one of the research methods undertaken in this study. The chapter mainly utilises various statistical techniques including descriptive analysis, cross tabulation, Kruskal-Wallis and factor analysis that are relevant to the variables of the questionnaire survey which was analysed via the SPSS software. In the data collection phase, 280 questionnaires were returned, but 20 were rejected, leaving 260 questionnaires for analysis.

This chapter consists of nine main sections, which discuss the important topics derived from the questionnaires that includes the background of respondents' personal detail; background of respondents' mortgage experiences; respondents' awareness to Islamic mortgage products; criteria in choosing the best deal for mortgage; respondents' satisfaction and dissatisfaction of their mortgages; respondents' perceptions to the mortgage chosen; respondents' expectations to Islamic mortgage; factor analysis and conclusion.

8.2 PROFILES OF THE RESPONDENTS

This section presents a profile analysis of the respondents by referring to gender, age, religion, highest education level and occupation, to give some insight on the characteristics and nature of the respondents. For the purpose of discussion, all the data are presented in tables that include frequency, percent or valid percent (if necessary) and also mean-value. Then these tables are then descriptively explained based on its variables.

Table 8.1: Summary of Respondents' Personal Details

Gender			
	Frequency	Percent	
Male	122	46.9	
Female	138	53.1	
Total	260	100.0	
Age			
	Frequency	Percent	
Below 20	2	0.8	
21-30	41	15.8	
31-40	151	58.1	
41-50	56	21.5	
Above 50	10	3.8	
Total	260	100.0	
Religion			
	Frequency	Percent	
Muslim	237	91.2	
Buddhist	8	3.1	
Hindu	8	3.1	
Christian	6	2.3	
Others	1	0.4	
Total	260	100.0	

Table 8.1 depicts that on the gender variable, female respondents are the majority with 53.1%, while male respondents are 46.9% from a total 260 respondents. This result can impliedly be related to the situation in the city, where the survey is concentrated. The fact that females are also actively involved in labour force, and have become the working group where some are capable of owning their own house through the mortgage.

In terms of age distribution, a majority of the respondents are between 31-40 years old with 58.1%, which is followed by 21.5% respondents between 41-50 years old and 15.8% respondents are between 21-30 years old. This finding implies that during the age of 31-40 years old, most of the people are married and therefore plan to settle down with a family thus it becomes a necessity to purchase the house for the shelter of the family. Moreover, most of people during this age normally receive stable income via secured jobs which entitle them to mortgage application.

Besides, the last variable in this table depicts that Muslims indeed are the majority respondents with 91.2%, who are followed by Hindus and Buddhist who share the same percentage that is 3.1%. This result may suggest that Muslims are the majority people in Malaysia since Islam is recognised as the religion of the Federation. Article 3 (1) of the federal constitution which is the supreme law of Malaysia recognises Islam as the religion of

the Federation, but other religions can also be practiced in peace and harmony. As the sampling concerned, since the survey was undertaken in the residential area where certain quota of homeownership is allocated to the Malay group, this explains why majority of respondents are Muslims.

Table 8.2: Respondents' Educational and Occupational Profile

Highest education level			
	Frequency	Percent	Mean
Primary /secondary school	42	16.2	
College/diploma/matriculation/A-level	29	11.2	
First degree	120	46.2	
Professional qualification	25	9.6	
Postgraduate (master/phd)	43	16.5	
Others (certificate)	1	0.4	
Total	260	100.0	3.00
Occupation			
	Frequency	Percent	Mean
Executive/Manager	74	28.5	
Professional	62	23.8	
Private company	9	3.5	
Academician/education	51	19.6	
Small business	7	2.7	
Businessman	6	2.3	
Retired	5	1.9	
Others	46	17.7	
Total	260	100.0	4.22

As can be seen in table 8.2, in terms of their level of education, out of the total 260 respondents, a majority of the respondents (46.2%) had at least a bachelor degree, 16.5% had a postgraduate degree, and 11.2% hold a college diploma or are still in pre-university education, and 9.62% had a professional qualification. Nevertheless, it is worthwhile to note that quite a substantial percentage (16.2%) of the respondents only have primary or secondary school qualification as the highest level of education.

Table 8.2 also depicts background of occupation of the respondents where study considers wide ranges of occupational background: managers and executives with 28.5% and then comes professionals such as lawyers, doctors, engineers, accountants and *etc.* that are 23.8% and academician or teacher are 19.6% . It is followed by respondents who are working as clerk, technician or better known as support staff that was grouped under 'others' that constitute 17.7%. Moreover, respondents who are self- employed namely private company, businessman and small business constitute 3.5%, 2.5% and 2.7%, respectively, while retirees contribute to the lowest rank of the respondents that are only 1.9% out of 260 respondents.

8.3 MORTGAGE EXPERIENCE OF THE RESPONDENTS

The objective of this section is to understand the respondents' mortgage experience which also includes the information on mortgage provider, type of mortgage, the term of repayment, tenure of mortgage, type of property purchased, the status of the property during the purchase as well as present status of the property. This data is necessary to offer a platform for the next discussion on the perception and expectation of the respondents toward their mortgage generally and to Islamic mortgage particularly.

Table 8.3: Summary of Respondents' Mortgage Provider and Type of Mortgage Chosen

Mortgage Provider			
	Frequency	Percent	Mean
Bank	148	56.9	
Government	105	40.4	
Company	5	1.9	
Others	2	0.8	
Total	260	100.0	1.47
Type of Mortgage			
	Frequency	Percent	Mean
Islamic	174	66.9	
Conventional	86	33.1	
Total	260	100.0	1.33

Table 8.3 depicts that, more than half of the respondents, namely 56.9%, chosen banks as their mortgage providers while about 40% of the respondents had chosen to have the mortgage from the government and only 1.9% from private companies. This implies that all of 105 respondents who chose government mortgages are the government employees who are entitled to have housing loan benefit provided by the government, with a minimum interest, which encourages them to take up mortgage. In addition, there is also the cooperative option, which provide mortgage for their members. As was shown in Table 8.3, the respondents with cooperative mortgage constitute 0.8% of the total respondents. In terms of the type of mortgage, a majority of the respondents, 66.9%, had chosen Islamic home financing as their mortgages, while 33.1% have conventional mortgage.

Table 8.4: Cross Tabulation Between Mortgage Provider and Type of Mortgage

Mortgage Provider		Type of Mortgage		Total
		Islamic	Conventional	
Bank	Count	87	61	148
	% within q1	58.8%	41.2%	100.0%
	% within q2	50.0%	70.9%	56.9%
	% of Total	33.5%	23.5%	56.9%
Government	Count	81	24	105
	% within q1	77.1%	22.9%	100.0%
	% within q2	46.6%	27.9%	40.4%
	% of Total	31.2%	9.2%	40.4%
Company	Count	5	0	5
	% within q1	100.0%	.0%	100.0%
	% within q2	2.9%	.0%	1.9%
	% of Total	1.9%	.0%	1.9%
Others	Count	1	1	2
	% within q1	50.0%	50.0%	100.0%
	% within q2	.6%	1.2%	.8%
	% of Total	.4%	.4%	.8%
Total	Count	174	86	260
	% within q1	66.9%	33.1%	100.0%
	% within q2	100.0%	100.0%	100.0%
	% of Total	66.9%	33.1%	100.0%

Table 8.4 breaks down further the type of mortgage and mortgage provider, which shows that there are quite significant number of respondents who chose government as their mortgage provider opt for the Islamic mortgage. This can be explained by the fact that government is offering both Islamic and conventional home financing with the similar financing rate of 4%, making it an advantage for the Muslims working for the government to obtain the lower/same financing rate as conventional mortgage without having to compromise with their faith. As for the respondents who receive home financing from the banks, 58.8% opt for Islamic home financing, which constitute 87 out of 148 respondents.

This may suggest that the prospect of Islamic home financing is quite promising taking into account its existence in the market for more than three decades, particularly for the respondents whose age are between 31-40 where the introduction, implementation and marketing of Islamic home financing take place in parallel with their life and the need for home ownership is increasing during this age. This situation can be further evidenced in Table 8.5 where the respondents from age groups of 31-40 and 41-50 are the highest group who opt for Islamic home financing with 70.9% and 71.4% of the respondents respectively. It is also interesting to note that only 20% respondents above 50 years of age opt for Islamic

home financing. This situation may also suggest that during the time when they applied for home financing, the exposure, access to and marketing of an Islamic home financing was still in the infancy period which may have resulted in lack of awareness on Islamic home financing of this particular group.

Table 8.5: Cross Tabulation Between Type of Mortgage and Age

Mortgage		Age					Total
		Below 20	21-30	31-40	41-50	Above 50	
Islamic	Count	2	23	107	40	2	174
	% within q2	1.1%	13.2%	61.5%	23.0%	1.1%	100.0%
	% within q19	100.0%	56.1%	70.9%	71.4%	20.0%	66.9%
Conventional	Count	0	18	44	16	8	86
	% within q2	.0%	20.9%	51.2%	18.6%	9.3%	100.0%
	% within q19	.0%	43.9%	29.1%	28.6%	80.0%	33.1%
Total	Count	2	41	151	56	10	260
	% within q2	.8%	15.8%	58.1%	21.5%	3.8%	100.0%
	% within q19	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.005

In addition, Table 8.6 further highlights the relationship between the type of mortgage chosen and religious adherence, which is a product of cross tabulating between these two variables. The results suggest that Muslims remain the largest group of respondents opting for Islamic home financing, which is consistent with their faith. Based on this result, it can be suggested that marketing strategy should be enhanced in order to promote Islamic home financing to non-Muslims due to its own advantages which stresses fair relationship and social justice between the parties. It should, however, be noted from the results that the other religious dominations have also taken up Islamic home financing ranging from 12.5% to 16.7% among the participants.

Table 8.6: Cross Tabulation Between Type of Mortgage and Religion

Mortgage		Religion					Total
		Muslim	Buddhist	Hindu	Christian	Others	
Islamic	Count	171	1	1	1	0	174
	% within q2	98.3%	.6%	.6%	.6%	.0%	100.0%
	% within q20	72.2%	12.5%	12.5%	16.7%	.0%	66.9%
Conventional	Count	66	7	7	5	1	86
	% within q2	76.7%	8.1%	8.1%	5.8%	1.2%	100.0%
	% within q20	27.8%	87.5%	87.5%	83.3%	100.0%	33.1%
Total	Count	237	8	8	6	1	260
	% within q2	91.2%	3.1%	3.1%	2.3%	.4%	100.0%
	% within q20	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.000

In overall reflecting, as can be seen in Table 8.6., the Chi-Square Test, as a goodness of fit test, produced full significance for this relationship indicating that there is a significant relation between religion and mortgage type.

In addition, cross tabulation in Table 8.7 shows that the respondents who work for the government particularly from the group of academician including teachers and lecturers would have access to housing loan provided by the government. Therefore, they indirectly chose government as their mortgage provider, while the respondents from private sectors who do not have access to the government housing loan will opt for bank as their mortgage providers. It is again understood that the occupation is also the important factor in determining the mortgage provider. This situation is also evident from the Chi-Square Test, which produced quite significance result (0.004) for this relationship indicating that there is a significant relation between occupation and mortgage type, as can be seen in Table 8.7.

Table 8.7: Cross Tabulation Between Mortgage Provider and Occupation

Provider		Occupation								Total
		Manager/ Executive	Professional	Private company	Academician	Small Business	Merchant/ Businessman	Retired	Others	
Bank	Count	50	42	6	13	7	5	2	23	148
	% within q1	33.8%	28.4%	4.1%	8.8%	4.7%	3.4%	1.4%	15.5%	100.0%
	% within q22	67.6%	67.7%	66.7%	25.5%	100.0%	83.3%	40.0%	50.0%	56.9%
Government	Count	21	20	3	37	0	1	3	20	105
	% within q1	20.0%	19.0%	2.9%	35.2%	.0%	1.0%	2.9%	19.0%	100.0%
	% within q22	28.4%	32.3%	33.3%	72.5%	.0%	16.7%	60.0%	43.5%	40.4%
Company	Count	2	0	0	1	0	0	0	2	5
	% within q1	40.0%	.0%	.0%	20.0%	.0%	.0%	.0%	40.0%	100.0%
	% within q22	2.7%	.0%	.0%	2.0%	.0%	.0%	.0%	4.3%	1.9%
Others	Count	1	0	0	0	0	0	0	1	2
	% within q1	50.0%	.0%	.0%	.0%	.0%	.0%	.0%	50.0%	100.0%
	% within q22	1.4%	.0%	.0%	.0%	.0%	.0%	.0%	2.2%	.8%
Total	Count	74	62	9	51	7	6	5	46	260
	% within q1	28.5%	23.8%	3.5%	19.6%	2.7%	2.3%	1.9%	17.7%	100.0%
	% within q22	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.004

Table 8.8: Summary of Respondents' Period of Making Repayment to the Mortgage Provider and Term of Monthly Repayment

How long the mortgage has been paid?			
	Frequency	Percent	Mean
Less than 2 year	56	21.5	
2-5 years	61	23.5	
6-10 years	52	20.0	
11-15 years	22	8.5	
More than 15 years	69	26.5	
Total	260	100.0	
Term of monthly repayment			
	Frequency	Percent	Mean
Fixed rate	198	76.2	
Variable rate	52	20.2	
Others	10	3.8	
Total	260	100.0	

As depicted in Table 8.8, the data also revealed the information on respondents' terms of monthly repayment and length of their paid mortgages. In terms of monthly repayment, about 76.2% of the respondents have fixed rates; while 20.2% chose variable rates and the remaining 3.8% chose a combination of these two. As such, it suggests that more than half of the total respondents chose fixed rate because of financial management. In other words, if the respondents chose a fixed rate, it is easier to plan their monthly budget out of their household income as the mortgage payment is fixed until the end of the tenure.

In terms of their mortgage experience which is measured in terms of the starting year of the mortgage repayment, Table 8.8 also depicts that 26.5% of the respondents have paid their mortgages for more than 15 years, followed by the second largest group with about 23.5% who have paid for 2 to 5 years; 21.5% still paying for the last 2 years and 20% are paying their mortgages for about 6-10 years. As the figures indicate, the duration of mortgage experience is very closely spread between various categories of years. The information on the duration they have paid for their mortgage is significant in determining their satisfaction toward their chosen mortgage either Islamic or conventional, which is discussed in the following sub section.

Table 8.9 further depicts cross tabulation on the type of mortgage and the term of repayment. The result suggests that 82.8% of the respondents opt for Islamic home financing choose fixed rate as the term of repayment. This situation is understood when the offering of Islamic home financing by all the mortgage providers particularly through BBA have normally been agreed on fixed rate on deferred payment basis. Only recently, BBA is also introduced as

variable rate. This situation is further evidenced from the Chi-Square Test, as a goodness of fit test, produced very significant result (0.001) for this relationship indicating that there is a significant relation between the term of repayment and mortgage type.

Table 8.9: Cross Tabulation Between Type of Mortgage and Term of Monthly Repayment

Mortgage		Monthly Repayment			Total
		Fixed rate	Variable rate	Others	
Islamic	Count	144	23	7	174
	% within q2	82.8%	13.2%	4.0%	100.0%
	% within q10	72.7%	44.2%	70.0%	66.9%
Conventional	Count	54	29	3	86
	% within q2	62.8%	33.7%	3.5%	100.0%
	% within q10	27.3%	55.8%	30.0%	33.1%
Total	Count	198	52	10	260
	% within q2	76.2%	20.0%	3.8%	100.0%
	% within q10	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.001

Table 8.10: Status of the Property

From where did you purchase the property?(the status of the property when the respondents first bought the house)			
	Frequency	Percent	Mean
From a developer and still under construction	144	55.4	
From a developer and is a completed house	52	20.0	
Form a previous owner	55	21.2	
Others	9	3.5	
Total	260	100.0	
Have you moved in the house?			
	Frequency	Percent	Mean
Yes	170	65.4	
No	72	27.7	
I am in the process of moving in	18	6.9	
Total	260	100.0	
Reason for not moving in			
	Frequency	Percent	Mean
The house is not yet ready	27	37.5	
The house is ready but I am not	10	13.9	
I am renting out the house for extra income	26	36.1	
Others	9	12.5	
Total	72	100.0	

Table 8.10 depicts the data on the house as the subject matter of the mortgage, which includes the information as to where the respondents purchased the house, whether they have already moved in, and if not, why they are not moving in the houses purchased. Table 8.10

demonstrates that 55.4% of the respondents purchased the house from developer when the house was still under construction during the time of purchase.

The data show the situation of housing market in Malaysia, which use the concept of ‘sell and build’ instead of ‘build and sell’ as has been discussed in the earlier chapter. Then, 21.1% purchased the house on the basis of sub sale or from the previous owner, while only 20% of total respondents purchased a completed house from the developers. Apart from that, there are also about 9% of respondents who purchased the land and built the house by themselves using their own contractors.

In enquiring whether the participants have moved in the house, about 65.4% and 6.9% of the respondents had already been moved and in the process of moving in respectively. There are also significant number of respondents who have yet to move in the house due to various reasons, who had not moved into because the house is still under construction and not yet ready and indeed there are about 37.5% respondents chose this reason. In other circumstances, even the houses are already completed, there is still a significant amount of respondents, 36.1%, chose not to move in, as they prefer to rent out the house to earn extra income while 13.9% is not ready to move in. The results, thus, indicate that investment motive plays also an important role in the demand for housing.

Table 8.11: Cross Tabulation Between Type of Mortgage and Type of Property

Mortgage		Type of Property				Total
		From a developer and is still under construction	From a developer and is a completed house	From a previous owner	Others	
Islamic	Count	96	33	37	8	174
	% within q2	55.2%	19.0%	21.3%	4.6%	100.0%
	% within q11	66.7%	63.5%	67.3%	88.9%	66.9%
Conventional	Count	48	19	18	1	86
	% within q2	55.8%	22.1%	20.9%	1.2%	100.0%
	% within q11	33.3%	36.5%	32.7%	11.1%	33.1%
Total	Count	144	52	55	9	260
	% within q2	55.4%	20.0%	21.2%	3.5%	100.0%
	% within q11	100.0%	100.0%	100.0%	100.0%	100.0%

Table 8.11 shows that quite significant numbers of respondents (55.2%) purchased the house from the developer which is still under the construction at the time of contract made by using Islamic home financing. This suggests that having an appropriate mode of financing is crucial

to ensure the interests of the buyers as *istisna'* mode of financing or MM should be used for the house under construction while BBA should be used for completed house only.

8.4. AWARENESS ON ISLAMIC MORTGAGE

The data also includes the question on respondents' awareness on the Islamic mortgage product. It should be noted that Malaysia is one the countries which already succeed in implementing Islamic banking system and Islamic mortgage product particularly BBA home financing product has already been in the market for more than 25 years.

Table 8.12: Participants' Awareness on Islamic Home Financing Products

Product	Not aware at all (%)	Not aware (%)	Neutral (%)	Aware (%)	Very Aware (%)	Mean
<i>Bay Bithaman Ajil (BBA)</i>	12.3	15.4	11.2	46.2	15.0	3.36
<i>Musharakah Mutanaqisah (MM)</i>	21.2	38.5	18.1	15.8	6.5	2.48
<i>Istisna'</i>	23.8	38.8	16.2	16.2	5.0	2.40

Table 8.12 depicts that the most popular Islamic mortgage product in terms of the awareness of the participants is BBA, followed by MM and then *istisna'*, which is evidenced in the mean ranking presented. This can be explained by the fact that BBA is the 'only product' of Islamic mortgage product offered in the market for more than 25 years by all the Islamic banks, while MM has just been offered in the last 5 years and currently being offered by only 7 Islamic banks, while *istisna'* is offered by only Bank Islam Malaysia Berhad, using the similar concept to BBA, except the latter is for the house under construction.

It should be noted that although BBA is the most popular product, there are still significant number of respondents who are not really aware of its existence in the market. According to table 8.12, 12.3% are not aware at all, followed by 15.4% are not aware while 11.2% are still not sure on their awareness of this product. The critical aspect of the awareness can also be found with the mean value, which is rather close to the 'neutral' option tilting towards 'awareness'. It should be noted that about 46.2% and 15% respondents are aware and very aware, respectively on BBA. This indicates that majority of the respondents have certain level of awareness of BBA.

Apart from BBA, MM has recorded a different trend, since it is a recently new product within Islamic mortgage provision. The data revealed that only 15.8% and 6.5% who are aware and very aware respectively on this product, which left significant numbers of respondents being not aware at all, not aware and neutral on this product that are about 21.2%, 38.5% and 18.1% respectively. Besides, the respondents' awareness of *istisna'* home financing is significantly small at 21.2%.

In further analysing the data, awareness on the products and the age is considered to be correlated, for which cross tabulation analysis is conducted in Table 8.13. The result is indeed consistent with the earlier result in Table 8.5 (cross tabulation between type of mortgage and age) where the participants within age 31-40 is the highest group who are aware and very aware on this particular mode of home financing. On the other hand, only 1.7% of the participants who are above 50 indicate awareness of this type of home financing products. This is again consistent with the earlier result in Table 8.5, that may also suggests a similar reason for that situation. In addition, the Chi-Square Test, as a goodness of fit test, produced quite significant (0.031) result for this relationship indicating that there is a significant relation between age and awareness of BBA home financing product.

Table 8.13: Cross Tabulation Between *Bay Bithaman Ajil* and Age

Awareness		Age					Total
		Below 20	21-30	31-40	41-50	Above 50	
Not aware at all	Count	1	6	16	8	1	32
	% within q8(a)	3.1%	18.8%	50.0%	25.0%	3.1%	100.0%
	% within q19	50.0%	14.6%	10.6%	14.3%	10.0%	12.3%
Not aware	Count	0	12	18	5	5	40
	% within q8(a)	.0%	30.0%	45.0%	12.5%	12.5%	100.0%
	% within q19	.0%	29.3%	11.9%	8.9%	50.0%	15.4%
Do not know	Count	0	4	18	5	2	29
	% within q8(a)	.0%	13.8%	62.1%	17.2%	6.9%	100.0%
	% within q19	.0%	9.8%	11.9%	8.9%	20.0%	11.2%
Aware	Count	1	12	74	31	2	120
	% within q8(a)	.8%	10.0%	61.7%	25.8%	1.7%	100.0%
	% within q19	50.0%	29.3%	49.0%	55.4%	20.0%	46.2%
Very aware	Count	0	7	25	7	0	39
	% within q8(a)	.0%	17.9%	64.1%	17.9%	.0%	100.0%
	% within q19	.0%	17.1%	16.6%	12.5%	.0%	15.0%
Total	Count	2	41	151	56	10	260
	% within q8(a)	.8%	15.8%	58.1%	21.5%	3.8%	100.0%
	% within q19	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.031

Table 8.14: Cross Tabulation Between *Bay Bithaman Ajil* and Religion

Awareness		Religion					Total
		Muslim	Buddhist	Hindu	Christian	Others	
Not aware at all	Count	18	5	5	3	1	32
	% within q8(a)	56.3%	15.6%	15.6%	9.4%	3.1%	100.0%
	% within q20	7.6%	62.5%	62.5%	50.0%	100.0%	12.3%
Not aware	Count	36	2	1	1	0	40
	% within q8(a)	90.0%	5.0%	2.5%	2.5%	.0%	100.0%
	% within q20	15.2%	25.0%	12.5%	16.7%	.0%	15.4%
Do not know	Count	27	0	1	1	0	29
	% within q8(a)	93.1%	.0%	3.4%	3.4%	.0%	100.0%
	% within q20	11.4%	.0%	12.5%	16.7%	.0%	11.2%
Aware	Count	117	1	1	1	0	120
	% within q8(a)	97.5%	.8%	.8%	.8%	.0%	100.0%
	% within q20	49.4%	12.5%	12.5%	16.7%	.0%	46.2%
Very aware	Count	39	0	0	0	0	39
	% within q8(a)	100.0%	.0%	.0%	.0%	.0%	100.0%
	% within q20	16.5%	.0%	.0%	.0%	.0%	15.0%
Total	Count	237	8	8	6	1	260
	% within q8(a)	91.2%	3.1%	3.1%	2.3%	.4%	100.0%
	% within q20	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.00

Apart from that, religion and occupation are considered as important factors in determining the participants' awareness of BBA home financing product. As can be seen from, Table 8.14 and Table 8.15, that chi-square result, as a goodness of fit test, produced full significance for these two variables indicating that there are significant relations between the level of participants' awareness of BBA product with religion and occupation. This impliedly means that religious factor still plays an important role as patronage factor (see Table 8.26), which inevitably make Muslim as the highest group being aware of the BBA product. As regard to occupation of the respondents, the results show that people with the higher education are better exposed to matters related to Islamic finance and hence they will be more aware on BBA product, which consists of academicians, executives and professionals.

Table 8.15: Cross Tabulation Between *Bay Bithaman Ajil* and Occupation

Awareness		Occupation								Total
		Manager/ Executive	Professional	Private company	Academician	Small Business	Merchant/ businessman	Retired	Others	
Not aware at all	Count	5	4	1	11	1	1	0	9	32
	% within q8(a)	15.6%	12.5%	3.1%	34.4%	3.1%	3.1%	.0%	28.1%	100.0%
	% within q22	6.8%	6.5%	11.1%	21.6%	14.3%	16.7%	.0%	19.6%	12.3%
Not aware	Count	12	9	0	8	0	0	5	6	40
	% within q8(a)	30.0%	22.5%	.0%	20.0%	.0%	.0%	12.5%	15.0%	100.0%
	% within q22	16.2%	14.5%	.0%	15.7%	.0%	.0%	100.0%	13.0%	15.4%
Do not know	Count	8	7	2	5	0	0	0	7	29
	% within q8(a)	27.6%	24.1%	6.9%	17.2%	.0%	.0%	.0%	24.1%	100.0%
	% within q22	10.8%	11.3%	22.2%	9.8%	.0%	.0%	.0%	15.2%	11.2%
Aware	Count	38	21	5	24	5	5	0	22	120
	% within q8(a)	31.7%	17.5%	4.2%	20.0%	4.2%	4.2%	.0%	18.3%	100.0%
	% within q22	51.4%	33.9%	55.6%	47.1%	71.4%	83.3%	.0%	47.8%	46.2%
Very aware	Count	11	21	1	3	1	0	0	2	39
	% within q8(a)	28.2%	53.8%	2.6%	7.7%	2.6%	.0%	.0%	5.1%	100.0%
	% within q22	14.9%	33.9%	11.1%	5.9%	14.3%	.0%	.0%	4.3%	15.0%
Total	Count	74	62	9	51	7	6	5	46	260
	% within q8(a)	28.5%	23.8%	3.5%	19.6%	2.7%	2.3%	1.9%	17.7%	100.0%
	% within q22	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-square test: 0.000

Table 8.16 depicts a cross tabulation between the participants' awareness on MM and the religion. As expected, although the percentage of participants' awareness of this mode of Islamic home financing is quite low, 15.8% for 'aware' and 6.5% for 'very aware', Muslims remain the highest numbers of participant who are 'aware' of this product, despite it being introduced in the last 7 years. Hence, extra effort should be made to market this product, since it is deemed to be most appropriate product for Islamic home financing with being less controversial compared to BBA home financing. The Chi-square test shows quite a significant result for MM and religion which is 0.007, indicating that there is a significant relation between these two variables.

Table 8.16: Cross Tabulation Between *Musharakah Mutanaqisah* and Religion

Awareness		Religion					Total
		Muslim	Buddhist	Hindu	Christian	Others	
Not aware at all	Count	40	6	5	3	1	55
	% within q8(b)	72.7%	10.9%	9.1%	5.5%	1.8%	100.0%
	% within q20	16.9%	75.0%	62.5%	50.0%	100.0%	21.2%
Not aware	Count	95	2	1	2	0	100
	% within q8(b)	95.0%	2.0%	1.0%	2.0%	.0%	100.0%
	% within q20	40.1%	25.0%	12.5%	33.3%	.0%	38.5%
Do not know	Count	45	0	1	1	0	47
	% within q8(b)	95.7%	.0%	2.1%	2.1%	.0%	100.0%
	% within q20	19.0%	.0%	12.5%	16.7%	.0%	18.1%
Aware	Count	40	0	1	0	0	41
	% within q8(b)	97.6%	.0%	2.4%	.0%	.0%	100.0%
	% within q20	16.9%	.0%	12.5%	.0%	.0%	15.8%
Very aware	Count	17	0	0	0	0	17
	% within q8(b)	100.0%	.0%	.0%	.0%	.0%	100.0%
	% within q20	7.2%	.0%	.0%	.0%	.0%	6.5%
Total	Count	237	8	8	6	1	260
	% within q8(b)	91.2%	3.1%	3.1%	2.3%	.4%	100.0%
	% within q20	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Test: 0.007

Table 8.17 further depicts that besides religion, participants' occupations as a control variable is also important in determining the awareness on MM home financing. The cross tabulation shows that the professional group remains the largest group who are 'aware' and 'very aware' of this product, while the retirees and participants with small business remain not aware at all of this product. Since the professional in this research are mostly the lawyers who deals with the housing loan including the preparations of the legal documentation, they have indirect exposure to home financing products, which explains their high awareness and knowledge on

MM home financing product. On the other hand, taking into consideration the situation for the retirees that most of them have already owned a house, they would be less informed and less exposed to the new mode of home financing available in the market, especially the recent ones. This trend is indeed evident from the chi-square test, as the goodness of fit test, which show quite significant result of 0.024, indicating that there is significant relation between the occupation and the awareness on MM home financing product.

Table 8.17: Cross Tabulation Between *Musharakah Mutanaqisah* and Occupation

Awareness		Occupation								Total
		Manager/ Executive	Professional	Private company	Academician	Small Business	Merchant/ businessman	Retired	Others	
Not aware at all	Count	12	7	2	15	2	2	0	15	55
	% within q8(c)	21.8%	12.7%	3.6%	27.3%	3.6%	3.6%	.0%	27.3%	100.0%
	% within q22	16.2%	11.3%	22.2%	29.4%	28.6%	33.3%	.0%	32.6%	21.2%
Not aware	Count	26	24	4	23	4	0	5	14	100
	% within q8(c)	26.0%	24.0%	4.0%	23.0%	4.0%	.0%	5.0%	14.0%	100.0%
	% within q22	35.1%	38.7%	44.4%	45.1%	57.1%	.0%	100.0%	30.4%	38.5%
Do not know	Count	19	9	1	7	1	1	0	9	47
	% within q8(c)	40.4%	19.1%	2.1%	14.9%	2.1%	2.1%	.0%	19.1%	100.0%
	% within q22	25.7%	14.5%	11.1%	13.7%	14.3%	16.7%	.0%	19.6%	18.1%
Aware	Count	10	14	1	5	0	3	0	8	41
	% within q8(c)	24.4%	34.1%	2.4%	12.2%	.0%	7.3%	.0%	19.5%	100.0%
	% within q22	13.5%	22.6%	11.1%	9.8%	.0%	50.0%	.0%	17.4%	15.8%
Very aware	Count	7	8	1	1	0	0	0	0	17
	% within q8(c)	41.2%	47.1%	5.9%	5.9%	.0%	.0%	.0%	.0%	100.0%
	% within q22	9.5%	12.9%	11.1%	2.0%	.0%	.0%	.0%	.0%	6.5%
Total	Count	74	62	9	51	7	6	5	46	260
	% within q8(c)	28.5%	23.8%	3.5%	19.6%	2.7%	2.3%	1.9%	17.7%	100.0%
	% within q22	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-square test: 0.024

Table 8.18: Cross Tabulation Between *Istisna'* and Occupation

Awareness		Occupation								Total
		Manager/ Executive	Professional	Private company	Academician	Small Business	Merchant/ businessman	Retired	Others	
Not aware at all	Count	17	8	2	15	2	2	0	16	62
	% within q8(c)	27.4%	12.9%	3.2%	24.2%	3.2%	3.2%	.0%	25.8%	100.0%
	% within q22	23.0%	12.9%	22.2%	29.4%	28.6%	33.3%	.0%	34.8%	23.8%
Not aware	Count	26	25	5	22	4	1	5	13	101
	% within q8(c)	25.7%	24.8%	5.0%	21.8%	4.0%	1.0%	5.0%	12.9%	100.0%
	% within q22	35.1%	40.3%	55.6%	43.1%	57.1%	16.7%	100.0%	28.3%	38.8%
Do not know	Count	18	6	1	7	1	1	0	8	42
	% within q8(c)	42.9%	14.3%	2.4%	16.7%	2.4%	2.4%	.0%	19.0%	100.0%
	% within q22	24.3%	9.7%	11.1%	13.7%	14.3%	16.7%	.0%	17.4%	16.2%
Aware	Count	7	16	1	7	0	2	0	9	42
	% within q8(c)	16.7%	38.1%	2.4%	16.7%	.0%	4.8%	.0%	21.4%	100.0%
	% within q22	9.5%	25.8%	11.1%	13.7%	.0%	33.3%	.0%	19.6%	16.2%
Very aware	Count	6	7	0	0	0	0	0	0	13
	% within q8(c)	46.2%	53.8%	.0%	.0%	.0%	.0%	.0%	.0%	100.0%
	% within q22	8.1%	11.3%	.0%	.0%	.0%	.0%	.0%	.0%	5.0%
Total	Count	74	62	9	51	7	6	5	46	260
	% within q8(c)	28.5%	23.8%	3.5%	19.6%	2.7%	2.3%	1.9%	17.7%	100.0%
	% within q22	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-square test: 0.028

As for *istisna'*, Table 8.19 depicts cross tabulation between participants' level of awareness on *istisna'* home financing and religion. Table 8.18 shows cross tabulation between participants' level of awareness on *istisna'* home financing and occupation. The results are rather consistent, where the result for the chi-square test, as the goodness of fit test, show quite significant result of 0.033 and 0.028, indicating that there is a significant relation between the religion and occupation, respectively, and the awareness on this home financing product. This findings impliedly confirmed that religion and occupation are important factors in determining the awareness among the participants of Islamic mortgage product, particularly in this case *istisna'*.

Table 8.19: Cross Tabulation Between *Istisna'* and Religion

Awareness		Religion					Total
		Muslim	Buddhist	Hindu	Christian	Others	
Not aware at all	Count	47	6	5	3	1	62
	% within q8(c)	75.8%	9.7%	8.1%	4.8%	1.6%	100.0%
	% within q20	19.8%	75.0%	62.5%	50.0%	100.0%	23.8%
Not aware	Count	95	2	2	2	0	101
	% within q8(c)	94.1%	2.0%	2.0%	2.0%	.0%	100.0%
	% within q20	40.1%	25.0%	25.0%	33.3%	.0%	38.8%
Do not know	Count	40	0	1	1	0	42
	% within q8(c)	95.2%	.0%	2.4%	2.4%	.0%	100.0%
	% within q20	16.9%	.0%	12.5%	16.7%	.0%	16.2%
Aware	Count	42	0	0	0	0	42
	% within q8(c)	100.0%	.0%	.0%	.0%	.0%	100.0%
	% within q20	17.7%	.0%	.0%	.0%	.0%	16.2%
Very aware	Count	13	0	0	0	0	13
	% within q8(c)	100.0%	.0%	.0%	.0%	.0%	100.0%
	% within q20	5.5%	.0%	.0%	.0%	.0%	5.0%
Total	Count	237	8	8	6	1	260
	% within q8(c)	91.2%	3.1%	3.1%	2.3%	.4%	100.0%
	% within q20	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-square test: 0.033

8.5. CRITERIA IN CHOOSING THE BEST DEAL FOR MORTGAGE

The results from Table 8.20 until Table 8.25 are related to the factors determining participants decision in choosing for the best deal of the mortgage. The analysis also includes whether the respondents actually made a comparison between Islamic and conventional mortgage in deciding the best deal whereby the analysis is also extended to the factors helping to make a comparison between these two type of mortgages. The analysis in this

section also gauges the perceptions of the participants of Islamic and conventional mortgage particularly the pricing issues.

Table 8.20: Comparison of Housing Finances in Deciding the Best Deal

	Frequency	Percent	Mean
Yes	173	66.5	
No	87	33.5	
Total	260	100.0	1.33

Table 8.20 depicts that significant number of respondents, 66.5%, actually compared between Islamic and conventional mortgage before making their decision. However, there are still 33.5% respondents who did not make this comparison. This result suggests that for the respondent who did not compare and chose Islamic mortgage, this might be due to religious factor for making them to choose Islamic mortgage without any compromise to conventional one. The respondent who chose conventional without comparing, may be because the respondents themselves are unaware of the existence of these two types of mortgages. This preference may due to a preconceived thought or 'hearsay' that Islamic mortgage is more expensive than the conventional one. These reasons are essential which are further probed in the following discussion as part of the analysis.

Table 8.21: Cross Tabulation Between Type of Mortgage and Whether the Respondents Make Comparison to Decide the Type of Mortgage

Mortgage		Level of Satisfaction		Total
		Yes	No	
Islamic	Count	122	52	174
	% within q2	70.1%	29.9%	100.0%
	% within q5	70.5%	59.8%	66.9%
Conventional	Count	51	35	86
	% within q2	59.3%	40.7%	100.0%
	% within q5	29.5%	40.2%	33.1%
Total	Count	173	87	260
	% within q2	66.5%	33.5%	100.0%
	% within q5	100.0%	100.0%	100.0%

Table 8.21 renders further analysis by examining the people who did compare mortgages before making a decision with the objective of finding out how many of them are currently using Islamic housing finance as well as conventional. This is done by cross tabulating between the type of housing finance currently being used and whether the respondents compare the two facilities or not. From the Table 8.21, it can be said that a greater number of

respondents opted for the Islamic housing finance did make a comparison between the Islamic and the conventional housing finance, whereas a slightly higher number of respondents who chose conventional housing finance did not compare between these two.

It can, therefore, be suggested that those who take up Islamic housing finance, insist on taking it up even after the results from the comparison between the two products might prove to be non-favourable. On the other hand, it can be suggested that those who chose Islamic housing finance with comparing might be due to religious factor.

As for those who take up the conventional housing finance after comparing the two facilities, it can be suggested that they take it up as a result of that comparison, whereby the conventional housing finance seemed better from different aspects compared to the Islamic housing finance. However, those who do not compare and yet still take up the conventional housing finance, suggest that they do not care about the religious reason or any other criterion.

Table 8.22: Cross Tabulation Between Types of Mortgage Providers and Whether the Respondents Make Comparison in Deciding the Best Deal for Mortgage

Mortgage's Providers		Level of Satisfaction		Total
		Yes	No	
Bank	Count	100	48	148
	% within q1	67.6%	32.4%	100.0%
	% within q5	57.8%	55.2%	56.9%
Government	Count	67	38	105
	% within q1	63.8%	36.2%	100.0%
	% within q5	38.7%	43.7%	40.4%
Company	Count	4	1	5
	% within q1	80.0%	20.0%	100.0%
	% within q5	2.3%	1.1%	1.9%
Others	Count	2	0	2
	% within q1	100.0%	.0%	100.0%
	% within q5	1.2%	.0%	.8%
Total	Count	173	87	260
	% within q1	66.5%	33.5%	100.0%
	% within q5	100.0%	100.0%	100.0%

Table 8.22 is a cross tabulation between various mortgage providers and whether the respondents compare or not. As can be seen respondents who take out their housing finance with a bank are most likely to compare between the Islamic and conventional housing finance. On the other hand, those taking out housing finance with the Government or their Companies have lesser propensity to compare. However, it seems that most of the

participants do compare. Despite such comparison, the respondents who opt for Islamic home financing is still higher. This is very much expected, because there is no difference between the Islamic and conventional housing finance in terms of the rates charged by the government and the companies. The Islamic housing finance is normally offered at the same rate as that of the conventional housing finance.

In furthering the research, the criteria used in comparing between Islamic and conventional home financing examined through the responses provided by the participants. The results are reported in Table 8.23.

Table 8.23: Selection Criteria When Comparing Between Islamic and Conventional Mortgage

Criteria	Not important at all (%)	Not important (%)	Neutral (%)	Important (%)	Very Important (%)	Mean
Amount of monthly repayment	0.6	0.6	6.4	38.2	54.3	4.45
Period of repayment	0.6	0.6	9.2	42.8	46.8	4.35
Capability to safeguard the customers' interests	0.6	2.9	11.0	34.1	51.4	4.33
Term of repayment	0.6	1.7	7.5	45.1	30.6	4.32
Convenient repayment system	0.6	2.3	12.7	39.9	44.5	4.25
Speedy processing and approval	0.6	2.9	18.5	39.3	38.7	4.13
Quality of customer services	1.2	2.3	20.8	45.1	30.6	4.02
Variety of products offered	0.6	2.9	19.7	47.4	29.5	4.02
Free consultation and enquiries	1.2	2.3	28.3	37.0	31.2	3.95

As concluded from Table 8.20, 66.5% of the respondents had compared the mortgage types in deciding the best deal for their mortgages. There are indeed several criteria that matter for the comparison, the mean ranking of which provided in Table 8.23. As can be seen, the most important criteria in deciding for the best mortgage to be chosen is the 'amount of monthly repayment' (mean value: 4.45), which is followed by 'period of repayment' (mean value: 4.35); 'product providing safeguard for customers' interests' (mean value: 4.33) and the 'term of repayment' (mean value: 4.32). As been highlighted in Chapter 7, the interview analysis showed that these criteria are consistent with the opinion of most practitioners in Islamic

banking industry when responding to the questions on customers' concerns in deciding for their mortgage. In other words, interviewees also opined that the customers' concerns in selecting their mortgages are based on the price, tenure and type of repayment.

Table 8.24: Summary of Respondents' Opinion of Prices Between Islamic and Conventional Mortgage

	Frequency	Percent	Mean
Islamic is cheaper	31	17.9	
Islamic is more expensive	79	45.7	
Islamic is as cheap/expensive	30	17.3	
Not sure	33	19.1	
Total	173	100.0	2.38

After establishing the main criteria used in making comparison between Islamic and conventional mortgage, those respondents (173 respondents or 66.5% of the respondents) were also asked to respond on the question of the prices of mortgages. The data revealed that 45.7% respondents opined that Islamic mortgage is more expensive than the conventional one. 19.1% respondents who are not really sure on the comparative pricing issue, while 17.9% of the respondents believed that Islamic mortgage is cheaper compared to conventional one, and finally about 17.3% respondents expressed that Islamic and conventional mortgages are similar in their prices.

Table 8.25: Cross Tabulation Between Type of Mortgage and Mortgage's Price

Mortgage		Mortgages' Price				Total
		Islamic mortgage is cheaper than conventional one	Islamic mortgage is more expensive than conventional one	Islamic mortgage is as cheap/expensive as the conventional one	I am not sure	
Islamic	Count	27	48	25	22	122
	% within q2	22.1%	39.3%	20.5%	18.0%	100.0%
	% within q7	87.1%	60.8%	83.3%	66.7%	70.5%
Conventional	Count	4	31	5	11	51
	% within q2	7.8%	60.8%	9.8%	21.6%	100.0%
	% within q7	12.9%	39.2%	16.7%	33.3%	29.5%
Total	Count	31	79	30	33	173
	% within q2	17.9%	45.7%	17.3%	19.1%	100.0%
	% within q7	100.0%	100.0%	100.0%	100.0%	100.0%

The belief that Islamic mortgage is cheaper than the conventional one may be based on individual experience of mortgage relationship with the government, as government currently charges 4% interest/profit on the decreasing balance of the mortgage for both Islamic and conventional one. However, in the case of a default, the penalty for the conventional mortgage will increase until the settlement is achieved, while Islamic mortgage only charge 1% penalty in order to comply with *Shari'ah* requirement, thus make the conventional one more expensive than Islamic mortgage.

This issue is further highlighted through cross tabulation technique as in Table 8.25, which depicts that more than half of the people who compare the two facilities find Islamic housing finance more expensive than the conventional facilities. If this number is broken down further, it can be seen that quite a high percentage of respondents using Islamic housing finance find the Islamic facilities more expensive compared to those in the other category ('Islamic cheaper', 'Islamic mortgage same' and 'not sure'). For this type of respondent, it can be said that even though they consider Islamic housing finance more expensive, they chose to use the facility possibly due to reasons other than price. Such as religious adherence. Nevertheless, there are a number of respondents who find the Islamic housing finance cheaper than the conventional facilities, which must be the main reason for these people to opt for Islamic housing finance.

In any case, the difference in the number of respondents in four level of price comparison (cheaper, more expensive, the same and not sure) for those using Islamic facilities is not so distinct as compared to those using conventional housing finance. As seen in Table 8.25, most of those currently using conventional housing finance perceive the Islamic facilities to be more expensive than the conventional ones, which could be considered as the reason for them to opt for conventional housing finance.

8.6 DETERMINANTS FOR MORTGAGE CHOICE

This section further discusses the perceptions of respondents on their chosen mortgages by making a direct reference to the reasons for opting and not opting Islamic mortgage, which further followed by satisfaction level of the respondents of their mortgage. This section also attempt to locate the factors determining their level of satisfaction as well as non-satisfaction on the mortgage chosen.

As mentioned in the preceding Section 8.3, 66.5% of the respondents possessed Islamic mortgage, and the remaining has conventional mortgage. The analysis in this section aims first to locate their reasons of having the particular mortgage they have.

Table 8.26: Summary of Respondents' Reasons for Using Islamic Home Financing

Reason	Not important at all (%)	Not important (%)	Neutral (%)	Important (%)	Very Important (%)	Mean
Religious factor	2.3	0.6	6.3	17.1	73.7	4.58
Fixed monthly repayment	1.7	2.9	9.7	34.3	51.4	4.31
Competitive rate offered	2.3	3.4	18.3	34.3	41.7	4.10
Convenient repayment system	4.6	2.3	16.6	33.1	43.4	4.09
Excellent quality services	3.4	2.3	25.7	28.6	40.0	3.99
Recommendation from friends and family	7.4	13.7	36.0	25.7	17.7	3.31

The findings in Table 8.26 depict the reasons of 66.5% of the participants for using Islamic mortgage. The respondents needed to rate each of the factors according to their preferences (ranging from 'not important at all' to 'very important'). According to the mean ranking indicating the importance of the factor, the following list is developed.

- (i) **Religious factor** with the mean-value of 4.58, which indicates that the majority of respondents having Islamic mortgages feel that religion is the main factor driven them choosing Islamic mortgage, as Islam makes it mandatory to keep away from *riba*. About 73.7% and 17.1% of the respondents have rated the factor as 'important' and 'very important', respectively.
- (ii) **Fixed monthly repayment** with the mean value of 4.31 is the second highest ranking according to the mean-value. The result implies that fixed monthly repayment as a factor is a significant factor in determining individual preferences, which make easier for them to manage their monthly household income. About 34.4% and 51.4% of the respondents have rated the factor as 'important' and 'very important', respectively.
- (iii) **Competitive rate offered** with the mean value of 4.10 indicating that rate offered by the mortgage providers indeed play a significant role taking up a particular mortgage type, as 41.7% of the participants ranked it as 'very important', while 34.3% ranked it as 'important'.

- (iv) **Convenient repayment system:** The mean-value for this factor is 4.09, thus showing that another important role should be taken by mortgage providers to have sophisticated IT system in order to make the customers felt convenient in making the monthly repayment. About 17.7% and 25.7% of the respondents have rated the factor as ‘very important’ and ‘important’ respectively.
- (v) **Excellent quality services:** The mean-value for this factor is 3.99 thus make it second least choice compared to the above factors. This may imply that the customers can still tolerate with the quality services provided by the mortgage providers as long as the four factors above are satisfied. However, there are still significant numbers of respondents, 40.0% and 28.6%, rated it as ‘very important’ and ‘important’ factor respectively.
- (vi) **Recommendation from friends and family:** This is the least chosen factor in determining the use of Islamic mortgage with a mean-value about 3.31, which implies that respondents’ self-decision is very important in choosing the mortgage that they are wished to, without the influences of third party. The analysis show that 17.7 % and 25.7% rated this option as ‘very important’ and ‘important’ respectively.

Table 8.27: Summary of Respondents' Reasons for Not Using Islamic Home Financing

Reason	Not important at all (%)	Not important (%)	Neutral (%)	Important (%)	Very Important (%)	Mean
Expensive compared to conventional	3.5	16.5	29.4	21.2	29.4	3.56
Less flexibility in terms of repayment	4.7	11.8	37.6	25.9	20.0	3.45
Less flexibility in terms of repayment period	5.9	11.8	41.2	24.7	16.5	3.34
Inconvenient payment system	4.7	20.0	44.7	15.3	15.3	3.16
Bad service quality	10.6	16.5	47.1	16.5	9.4	2.98
Do not know its existence	21.2	14.1	38.8	12.9	12.9	2.82

Table 8.27 presents the opinion of the respondents who did not use Islamic mortgage, namely 84 out of 260 respondents. The following sections discuss the factors which contributed to their refusal of not opting Islamic mortgage; and the factors are ranked from the highest to the lowest mean-value.

- (i) **Expensive compared to conventional** with mean value of 3.56 indicates that money is always the most significant factor in deciding for the best deal for mortgages. As can be seen, the majority of respondents feel that Islamic mortgage is more expensive compared to conventional one, thus make them refuse to go for it. About 21.2% and 29.4% of the respondents have rated the factor as 'important' and 'very important', respectively.
- (ii) **Less flexibility in term of repayment:** The second factor preventing choosing Islamic mortgage is 'less of flexibility in terms of repayment' which recorded the mean value 3.45. This can be interpreted as there is a possibility that the product is not very well designed to provide flexibility in terms of repayment, thus making it less attractive in order to capture a niche in the market. For instance, some customers may need lower repayment amount for the first three years of financing, but will be increased later after certain years. In relation to this factor, about 25.9% and 20.0% of the respondents have rated the factor as 'important' and 'very important', respectively.
- (iii) **Less flexibility in term of repayment period:** This factor has scored the mean-value of 3.34, resulting in as the third important factor in preventing the use of Islamic mortgage that were ranked by the respondents. Flexibility in terms of repayment period may include the payment holiday which permitted the customer not to pay the instalment in

the event being on unpaid leave, instead for paying an extra insurance. This implies that increasing the flexibility will definitely be capable in attracting the customer as about 24.7% and 16.5% of the respondents have rated this factor as 'important' and 'very important' respectively.

- (iv) **Inconvenient repayment system:** The mean-value for this factor is 3.16. This implies that mortgage provider should be able to provide an avenue for easier repayment of financing that may include the standing order and *etc.* in order to make their product more attractive. The respondents have rated the factor by both 'important' and 'very important' with 15.3%, respectively.
- (v) **Bad services quality:** The mean-value for this factor is 2.98, which make it second last factor for not using Islamic mortgage. About 16.5% and 9.4% of the respondents have rated the factor as 'important' and 'very important', respectively.
- (vi) **Do not know its existence:** The mean-value for this factor is 2.82. It is rather interesting to note from this that there is a possibility that people do have access to Islamic housing finance, most probably because the mortgage providers does offer the product to them. However, they rejected the Islamic housing finance particularly when it proves to be more costly to them. 12.9% of the respondents opted for 'important' and 'very important, respectively.

Table 8.28: The Impact of Occupational Groups on Reason for NOT Using Islamic Home Financing: Kruskal-Wallis Test

Reasons	Occupation	N	Mean Rank
expensive compared to conventional (Sig. 0.033)	Manager/Executive	23	44.89
	Professional	19	50.45
	Private company	1	11.50
	Academician	16	38.22
	Small Business	4	63.25
	Retired	4	11.88
	Others	19	43.50
	Total	86	
less flexibility in the terms of repayment (Sig. 0.020)	Manager/Executive	23	42.13
	Professional	19	49.84
	Private company	1	9.50
	Academician	16	36.16
	Small Business	4	54.50
	Retired	4	11.38
	Others	19	51.24
	Total	86	
less flexibility in the terms of repayment period (Sig. 0.002)	Manager/Executive	23	39.70
	Professional	19	49.66
	Private company	1	10.50
	Academician	16	32.28
	Small Business	4	56.50
	Retired	4	12.50
	Others	19	56.92
	Total	86	
bad quality service (Sig. 0.024)	Manager/Executive	23	48.15
	Professional	19	36.08
	Private company	1	16.50
	Academician	16	38.78
	Small Business	4	60.13
	Retired	4	17.50
	Others	19	52.66
	Total	86	
inconvenient payment system (Sig. 0.001)	Manager/Executive	23	40.63
	Professional	19	37.45
	Private company	1	13.00
	Academician	16	39.44
	Small Business	4	56.63
	Retired	4	14.63
	Others	19	61.37
	Total	86	
do not know on its existence (Sig. 0.019)	Manager/Executive	23	39.54
	Professional	19	37.16
	Private company	1	24.50
	Academician	16	42.31
	Small Business	4	46.13
	Retired	4	22.63
	Others	19	60.47
	Total	86	

In extending the analysis, Kruskal-Wallis test was conducted to locate the impact of various occupational categories on the factors leading not to choose Islamic mortgage, the results of which is depicted in Table 8.28. The results are as follows:

- (i) **Expensive compared to conventional:** The results suggest that there is a significant differences between the perception that Islamic mortgage is expensive compared to conventional mortgage and participants' occupation ($p=0.033$). Further, the result indicates that 'small business' has the highest statistical mean rank of 63.25, followed by 'professional' (mean=50.45); 'manager' (mean=44.89); 'others' (comprising of support staff for instance, clerk, and associated with those who held education below degree) (mean=43.50); 'academics' (mean=38.22); 'retired' (mean=11.88) and 'private company' (mean=11.50). The results could be interpreted as 'small business' strongly emphasising on the cost of the housing loan which influences their decision for not using Islamic mortgage. Considering that small business proprietors does not have high earning, this result can be justified. As to the pensioners, as the life-cycle hypothesis states most of the pensioners are in a state where they do not have much financial liabilities including mortgage, their position, then, can be understood.
- (ii) **Less flexibility in terms of repayment:** As can be seen in Table 8.28, the results suggest that there is a significant differences between perception that the Islamic mortgage has less flexibility and participants' occupation ($p=0.020$). The result indicates that 'small business' has the highest statistical mean rank of 54.50, followed by 'other' (mean=51.24); 'professional' (mean=49.84); 'manager' (mean=42.13); 'academician' (mean=36.16); 'retired' (mean=11.38) and 'private company' (mean=9.50). The results could be interpreted as due to income issue, 'small business' strongly emphasised on the less flexibility of repayments as an important determining factor for not using Islamic mortgage.
- (iii) **Less flexibility in terms of repayment period:** As the results in Table 8.28 depicts, there is a significant differences between this factor and participants' occupation ($p=0.002$). The results indicate that 'others' has the highest statistical mean rank of 56.92, followed by 'small business' (mean=56.50); 'professional' (mean=49.66); 'manager' (mean=39.70); 'academician' (mean=32.28); 'retired' (mean=12.50) and 'private company' (mean=10.50). The results could be interpreted as 'others' which mostly from the group of participants working as support staffs for the public sector,

strongly emphasized on the importance of less flexibility in repayment period of the housing loan which determining their reason for not using Islamic mortgage.

- (iv) **Bad quality services:** The results in Table 8.28 suggest that there is a significant differences between this 'bad quality of services' and participants' occupation ($p=0.024$). The examination of mean ranking shows that 'small business' has the highest statistical mean rank of 60.13, followed by 'others' (mean=52.66); 'manager' (mean=48.15); 'academician' (mean=38.73); 'professional' (mean=36.08); 'retired' (mean=17.50) and 'private company' (mean=16.50). This implies that 'small business' strongly emphasised on the quality services offered by the mortgage providers in determining their reason for not using Islamic mortgage.
- (v) **Inconvenient repayment system:** The results suggest that there is a significant difference between inconvenience of repayment system and participants' occupation ($p=0.001$). Further, the result indicates that 'others' has the highest statistical mean rank of 61.37, followed by 'small business' (mean=56.63); 'manager' (mean=40.63); 'academician' (mean=39.44); 'professional' (mean=37.45); 'retired' (mean=14.63) and 'private company' (mean=13.00). As highlighted earlier, 'others' includes the people who work as support staffs in either government or private office, for instances, clerk, personal assistant, secretary, account assistant and *etc.* In Malaysia, support staff is typically associated with the workers whose level of their education is below degree. The results could be interpreted as 'others' strongly emphasised on the method of repayment of the housing loan which determining their reason for not using Islamic mortgage.
- (vi) **Do not know its existence:** The results in Table 8.28 suggest that there is a significant differences between 'not having awareness' and participants' occupation ($p=0.033$). The results shows that 'others' has the highest statistical mean rank of 60.47, followed by 'small business' (mean=46.13); 'academician' (mean=42.31); 'manager' (mean=39.54); 'professional' (mean=37.16); 'private company' (mean=24.50) and 'retired' (mean=22.63). Thus, not knowing the existence of Islamic mortgage can be one of the reasons for not having considered Islamic mortgage as an option. It should however be stated that in a country, like Malaysia, where Islamic finance can be visible everywhere not having the awareness perhaps is an overstatement as an excuse. The

only way to explain this is perhaps the failure of agents not informing the potential customers about various options.

8.7 RESPONDENTS' SATISFACTION AND DISSATISFACTION ON THEIR MORTGAGES

After identifying the take up or not-taking-up reasons of both the mortgage offerings, this section examines the satisfaction of the respondents in relation to their mortgages. The results are depicted in Table 8.29.

As can be seen from Table 8.29, the whole sample of 260 responded to this question. It should be noted at the outset that the individual opinion may be influenced by their relationship with their mortgage providers and mortgage product itself. As depicted, the majority of respondents, about 87.3% satisfied with their mortgage, which left only 12.7% respondents who are not satisfied with their mortgage. In order to understand the satisfaction from individual mortgage type, cross-tabulation analysis in Table 8.30 was conducted.

Table 8.29: Summary of Respondents' Satisfaction Toward Their Mortgages

	Frequency	Percent	Mean
Yes	227	87.3	
No	33	12.7	
Total	260	100.0	1.13

Table 8.30: Cross tabulation Between Mortgage Type and Participants' Satisfaction on Their Mortgage Chosen

Mortgage		Satisfaction		Total
		Yes	No	
Islamic	Count	156	18	174
	% within q2	89.7%	10.3%	100.0%
	% within q14	68.7%	54.5%	66.9%
Conventional	Count	71	15	86
	% within q2	82.6%	17.4%	100.0%
	% within q14	31.3%	45.5%	33.1%
Total	Count	227	33	260
	% within q2	87.3%	12.7%	100.0%
	% within q14	100.0%	100.0%	100.0%

As can be seen in Table 8.30, respondents with conventional home financing are less satisfied with their mortgage chosen compared to the respondents who opted for Islamic mortgage: Within the Islamic mortgages, satisfaction rate is 89.7%, while within conventional mortgages the satisfaction rate is 82.6%. However, when we examine the distribution of 'yes' answers, it is obvious that 68.7% of the Islamic mortgage holders and only 31.3% of the conventional mortgage holder expressed as 'satisfied' with their mortgages. The reasons for the dissatisfaction are discussed in detail below. The analysis is further extended by examining the mortgage provider and participants satisfaction from their mortgage with the objective of investigation whether mortgage provider is an important determinants. The result are depicted in Table 8.31.

Table 8.31: Cross Tabulation Between Mortgage Provider and Participants' Satisfaction on their Mortgage Chosen

Provider		Satisfaction		Total
		Yes	No	
Bank	Count		31	148
	% within q1	79.1%	20.9%	100.0%
	% within q14	51.5%	93.9%	56.9%
Government	Count	103	2	105
	% within q1	98.1%	1.9%	100.0%
	% within q14	45.4%	6.1%	40.4%
Company	Count	5	0	5
	% within q1	100.0%	.0%	100.0%
	% within q14	2.2%	.0%	1.9%
Others	Count	2	0	2
	% within q1	100.0%	.0%	100.0%
	% within q14	.9%	.0%	.8%
Total	Count	227	33	260
	% within q1	87.3%	12.7%	100.0%
	% within q14	100.0%	100.0%	100.0%

Table 8.31 is a cross tabulation of the satisfaction level of housing finance taken up against different mortgage providers, which shows that a very high proportion of respondents taking up their housing finance with the Government and Company are more happier with their housing mortgage product. On the other hand, around one fifth of those taking up their housing finance with banks seem to be dissatisfied with the product.

The participants' perceptions were further examined to find out the factors contributed to their perceived satisfaction in relation to their mortgage chose, the results of which are depicted in Table 8.32.

Table 8.32: Summary of Factors Contributed to Satisfaction on Mortgage Chosen

	Not important at all (%)	Not important (%)	Neutral (%)	Important (%)	Very Important (%)	Mean
Fixed monthly repayment	0.4	2.6	8.8	36.1	52.0	4.37
Convenient repayment system	1.8	1.8	6.2	41.0	49.3	4.34
Good value for money	0.9	1.8	10.1	41.4	45.8	4.30
The product is simple and clearly understood	1.8	1.8	11.0	37.4	48.0	4.28
Standardised contract	0.9	1.3	11.5	43.2	43.2	4.26
Competitive rate	0.9	2.2	12.3	40.1	44.5	4.25
Fast process	1.3	1.8	12.8	40.1	44.1	4.24

According to the results in Table 8.32, the factors contributed to respondents' satisfaction were ranked from the highest to the lowest mean-value, as follows:

- (i) **Fixed monthly repayment:** This factor appears to be the highest contributing factor to respondents' satisfaction that recorded the mean-value 4.37. This result implies that the respondents tend to choose the mortgage with fixed monthly repayment making it easier for them to manage their monthly income. There are significant numbers of respondents rated it as 'very important', 52.0%, while others, 36.1%, rated it as 'important'.

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- (ii) **Convenient repayment system:** As can be seen in Table 8.32, the mean-value for this factor is 4.34, which implies that convenient repayment system is an important factor that really matter to contribute for the respondents' satisfaction with the percentage of 49.3% and 41.0% for 'very important' and 'important' respectively.
 - (iii) **Good value for money:** Another important factor is 'good value for money' scored high with the mean score of 4.30. In general, good value for money means the respondents believed and concluded that the mortgage chosen is worth with the price paid. The opinion of respondents on this factor may be influenced by their consideration on various criteria associated with the mortgage chosen, for example the services quality, the whole process of the mortgage which deems to be easier and convenient of repayment and *etc.* About 45.8% and 41.4% rated it as 'very important' and 'important' respectively.
 - (iv) **The product is simple and clearly understood:** Simple and easily understood mortgage product scored the mean-value of 4.28. This implies that mortgage or financing documentations should be drafted in a way that can be understood or at least should be explained to the customers for them to understand their rights and liabilities in a whole tenure of financing.
 - (v) **Standardised contract:** The mean-value for this factor is 4.26. The importance of this factor is indeed undeniable since it is able to increase the level of confidence among the respondents in choosing mortgage product.
 - (vi) **Competitive rate:** This factor scored the mean-value of 4.25 with 44.5% and 40.1% rated it as 'very important' and 'important' respectively.
 - (vii) **Fast process:** Albeit a quite high score of mean-value 4.25, this factor is ranked as the lowest from the whole ranking.

As the results demonstrates, although the factors are ranked in terms of importance, their high importance is obvious from the mean value, as the highest mean value is 4.37 while lowest is 4.25, and therefore is a small difference between the factors determining satisfaction and their mean values.

Table 8.33: Mean Rank: Mann-Whitney U Test Across Type of Mortgage and Satisfaction Factor

Mann-Whitney U Test: Mean Rank		
Convenient repayment system	Islamic Conventional	116.25 109.06
Fixed monthly repayment	Islamic Conventional	120.08 100.63
Standardised contract	Islamic Conventional	114.97 111.86
Good value for money	Islamic Conventional	117.98 105.25
The product is simple and clearly understood	Islamic Conventional	116.23 109.11
Fast process	Islamic Conventional	116.02 109.57
Competitive rate	Islamic Conventional	114.99 111.83

The analysis is further extended by employing Man Whitney U test to examine how each mortgage is performing, according to the participants, in relation to the factors determining satisfaction. As can be seen from Table 8.33, the respondents who chose Islamic mortgage are more satisfied than respondents who chose conventional mortgage. This is evident by the mean rank value of each factor, which is higher for Islamic mortgage compared to conventional ones in each satisfaction factor.

The reasons on participants' satisfaction toward their mortgage, particularly fixed monthly repayment and its relationship between the mortgage types is further highlighted by employing Mann-Whitney U test. Table 8.34 depicts that there is quite significant result (0.022) between this factor and the mortgage types indicating that fixed monthly repayment offered by the mortgage providers constitutes an important factor in determining the respondents' satisfaction toward their mortgage chosen. Therefore, it is again understood that under such situation, participants opt to Islamic mortgage mainly due to the reason that fixed monthly repayment may enable them to manage their household expenses easier, taking into account that they have to pay the same amount of facility throughout the tenure. In addition, this factor may deem significant for the participants working particularly with the government where they are receiving the same monthly incomes annually.

However, the result for other factors are not significant to the mortgage types; with 'convenient repayment system' (0.396); 'standardised contract' (0.717); 'good value for

money' (0.138); 'the product is simple and clearly understood' (0.407); 'fast process' (0.457) and 'competitive rate' (0.715)

Table 8.34: Mann-Whitney U Test for Participants' Satisfaction Factors and Mortgage Types

Reason	Asymp. Sig
Convenient repayment system	0.396
Fixed monthly repayment	0.022
Standardised contract	0.717
Good value for money	0.138
The product is simple and clearly understood	0.407
Fast process	0.457
Competitive rate	0.715

The participants were also asked the factors contributed to non-satisfaction on their mortgage chosen which is shown in Table 8.35.

Table 8.35: Summary of Factors Contributed to Dissatisfaction on Mortgage Chosen

	Not important at all (%)	Not important (%)	Neutral (%)	Important (%)	Very Important (%)	Mean
Expensive monthly instalment	0.0	0.0	15.2	24.2	60.6	4.45
Very complicated terms and conditions	0.0	0.0	21.2	36.4	42.4	4.21
High penalty charged	0.0	0.0	21.2	36.4	42.4	4.21
Inconvenient repayment system	0.0	0.0	33.3	15.2	51.5	4.18
Lengthy and confusing contract and procedure	0.0	0.0	24.2	33.3	42.4	4.18
No standardized contract	0.0	6.1	27.3	33.3	33.3	3.94
Slow process	0.0	3.0	36.4	27.3	33.3	3.91

Table 8.35 highlights the factors that caused the feeling of non-satisfaction among mortgage holders that are ranked from the highest to the lowest score of mean-value, as follows:

- (i) **Expensive monthly instalment:** The mean-value for this factor is 4.45, being the main concern that caused respondents' non-satisfaction on the mortgages chosen. Therefore, it can be suggested that some of the mortgage providers have not fully succeeded in making the product seem competitive against its rival or vice versa. For example, the

providers of Islamic housing finance seemed to rely solely on faith factor to attract customers.

- (ii) **Very complicated terms and conditions:** The mean-value for this factor is 4.21, thus making it as the second important factor rated by the respondents as an important factor contributing to their mortgage dissatisfaction. This result implies that complicated terms and conditions may cause a burden to the customer to understand their rights and liabilities in their relationship with the mortgage providers.
- (iii) **High penalty charged:** This factor scores the mean-value of 4.21. In general, the penalty charged in conventional mortgage is much more higher compared to Islamic mortgage, as normally the latter only charge about 1% penalty that should be channelled to the charity. As such, it is impliedly show that most of the respondents who rated this factor might be using conventional mortgage.
- (iv) **Inconvenient repayment system:** As the third ranked factor, this scores the mean-value of 4.18. As such, it can be said that mortgage providers should introduce effective and convenient system for the customers to repay their mortgages such as by providing online banking repayment system and *etc.*
- (v) **Lengthy and confusing contract and procedure:** This factor scores the mean-value of 4.18. Lengthy and confusing contract and procedure may be due to the amount of legal documentations needed to execute the financing and the mortgage providers' staffs who manages the process is not really familiar with the procedure.
- (vi) **No standardised contract:** This factor was rated as the second lowest ranking with the mean-value of 3.94. No standardised contract may arise in the case where the mortgage product is still new in the market whereby the banks as one of the mortgage providers have different interpretation on certain clauses of the legal documentations.
- (vii) **Slow process:** The mean-value for this factor is 3.91, which is the lowest ranking rated by the respondents who were not satisfied with their mortgages chosen. Slow process may take place particularly when the mortgage procedure might involve several bureaucratic processes to be fulfilled particularly when it involves several institutions for example independent property valuer or land office authorisation needed to process the loan application.

As the mean results indicates, one way or another these factors are all considered important reasons for dissatisfaction, as the mean values between them is not that different. In other words, the range is between 4.45, being the highest mean, and 3.91 is the lowest mean.

The analysis is further extended by employing Man Whitney U test to examine how each mortgage is performing in relation to the factors determining non-satisfaction. To reiterate, as can be seen from Table 8.33, the respondents with Islamic mortgage are more satisfied, which recorded higher mean rank value for each satisfaction factors, than respondents who chose conventional mortgage. However in Table 8.36, there are mix of responses of their dissatisfaction between the respondents. In particular, the higher mean values are recorded for the following dissatisfaction factors for Islamic mortgage: ‘inconvenient repayment system’ and ‘no standardised contract’. Thus, for these two factors, clients of Islamic mortgages is more dissatisfied compared to those who have conventional mortgage.

Table 8.36: Mean Rank: Mann-Whitney U Test Across Type of Mortgage and Dissatisfaction Factor

Mann-Whitney U Test: Mean Rank		
Inconvenient repayment system	Islamic Conventional	17.44 16.47
Very complicated terms and conditions	Islamic Conventional	16.64 17.43
No standardised contract	Islamic Conventional	17.08 16.90
High penalty charged	Islamic Conventional	14.67 19.80
Lengthy and confusing contract and procedure	Islamic Conventional	14.83 19.60
Slow process	Islamic Conventional	16.69 17.37
Expensive monthly instalment	Islamic Conventional	16.61 17.47

8.8 EXPECTATIONS OF RESPONDENTS ON ISLAMIC MORTGAGE

This section aims to analyse the data by further investigating the expectations of the respondents on the Islamic mortgage. It should be noted that this question required the respondents to respond this part irrespective of their mortgage either Islamic or conventional one. It is hoped that this will ensure the future prospect of Islamic banking particularly Islamic mortgage. Furthermore, the data can also be used by the mortgage providers in designing the product which is more attractive to the society as a whole and capable of fulfilling the needs of the customers and potential customers irrespective of their religions.

The results of the analysis is depicted in Table 8.37, and discussed according to the mean ranking from highest to the lowest.

- (i) **It should be able to safeguard customers' interests:** Table 8.37 depicts that this factor is the first and foremost criteria for respondents' expectation on Islamic mortgage with a mean-value of 4.74. In general, this expectation can be met since the characteristics of Islamic banking necessitates putting emphasis on fairness and justice with the objective of protecting the interests of the customers as a whole if all the features required by *Shari'ah* is highly observed in each and every products offered.
- (ii) **Excellent quality services should be provided:** The mean-value for this factor is 4.72. Apart from providing good image and outlook, the customers may also concerned with the human touch manifested in service providers' empathy, responsiveness and courtesy which are included in the dimension of personal skills that is in line with the religions and values. Therefore, it is crucial for the service providers to pay attention on this issue in order to retain the existing customers and attract the new ones.
- (iii) **It should be *Shari'ah* compliant:** The mean-value for this factor is 4.68 implying how important is for the service providers to ensure the product offered is *Shari'ah* compliant which has been approved by religious bodies. The result may also imply that the existence of *Shari'ah* compliant product is expected to increase the confidence level of the customers to Islamic products generally. It should be noted that religious factor expected from the Islamic mortgage only ranked third in the list, while customer interest and service related factors were scored higher. For patronage reasons as highlighted in Table 8.26, religious factor ranks the first with the mean value of 4.58 and excellent service ranks the fourth with the mean value of 3.99. In other words, it is timely to stress on the ethical merit of the Islamic mortgage product, rather than solely on the prohibition of *riba*. When such ethical merits provided, it will inevitably lead to the protection of the interests for both contracting parties; the bank and the customer. Moreover, in order to compete with the conventional mortgage and become attractive to non-Muslims clients, the Islamic banks should always provide excellent quality service.
- (iv) **It should reflect the true spirit of Islam as required by *maqasid*:** This factor scores the mean-value of 4.62. In general, the implementation of Islamic banking should reflect the true spirit of *maqasid* in the sense of optimizing the efficiency and profitability of the banks and their social responsibility by removing harm for all the

stakeholders. As before, being a religious factor and an important source of patronage, this factor only scored the fourth after rational expectations related to the maximisation of self-interest.

- (v) **Explanation should be provided on working mechanism of the product and implication of it:** The mean-value for this factor is 4.61. In general it shows that respondents expected the explanation on the process and working mechanism of the Islamic mortgage product chosen particularly when it is related to their rights and liabilities. This would increase their understanding of Islamic banking products and may make them appreciate on the unique of them.
- (vi) **It should comparatively be cheaper:** The next factor for respondents' expectation is on the price of the product which scores the mean-value of 4.52. This implies that in order to be commercially viable, the providers must ensure that the price of the product is competitive, particularly when comparing with the conventional mortgage.
- (vii) **Flexibility on repayment period should be given according to the needs of customer:** The mean-value for this factor is 4.52 implying that it is important to the service providers to engineer and design the product in accordance with the needs of the customers particularly on the repayment period.
- (viii) **Suitable product should be provided for completed houses and houses under construction:** Mortgage providers are also expected to provide appropriate modes of financing for house construction or completed house. For instance, it is more appropriate for the house under construction to be financed using the *istisna'*, while completed house should be financed using *murabahah* or MM. Besides complying with *Shari'ah*, appropriate modes of financing may also ensure the interests of the customers are observed and the mean value for this factor is 4.51.
- (ix) **Flexibility on term of repayment either fixed or variable rate should be given according to the needs of customers:** The mean-value for this factor is 4.46, which implies that the providers are expected to provide various choices on the term of repayment either fixed rate or variable rate, in accordance with the needs of the customers.
- (x) **Flexibility should be given for monthly repayment, for example payment holiday:** This factor scores the mean value of 4.27, which implies that the mortgage product

would be more attractive if the providers could provide the flexibility in terms of its monthly repayment. For instance, payment holiday is given to the customer who is on unpaid leave and he/she will continue paying the mortgage once he/she resumes working.

- (xi) **It should not compete on prices, but should stress on its unique features:** The mean value for this factor is 4.09. In general, the Islamic mortgage providers are entitled to obtain profits from the financing extended to the customers, however, while securing reasonable and competitive profits, it may also important for the providers to market the mortgage products by stressing on their unique features in order to attract more customers due to their advantages.

As can be seen from the mean values, they are very close indeed. This implies that all these factors are perceived very important by the participants. Therefore, in product design and marketing of Islamic mortgages these issues should be considered as paramount.

Table 8.37: Summary of Respondents' Expectations on Islamic Mortgage

	Strongly Disagree (%)	Disagree (%)	Do Not Know (%)	Agree (%)	Strongly Agree (%)	Mean
It should be able to safeguard customers' interests	0.0	0.4	1.5	21.9	76.2	4.74
Excellent quality services should be provided	0.0	0.0	2.3	23.8	73.8	4.72
It should be <i>Shari'ah</i> compliant	0.0	0.4	6.5	17.7	75.4	4.68
It should reflect the true spirit of Islam as required by <i>maqasid</i>	0.0	0.0	7.7	22.3	70.0	4.62
Explanation should be provided on working mechanism of the product and implication of it	0.0	0.0	5.4	28.1	66.5	4.61
It should comparatively be cheaper	0.0	1.2	6.5	31.9	60.4	4.52
Flexibility on repayment period should be given according to the needs of customer	0.4	1.9	3.8	32.7	61.2	4.52
Suitable product should be provided for completed houses and houses under construction	0.0	0.0	5.8	37.7	56.5	4.51
Flexibility on term of repayment either fixed or variable rate should be given according to the needs of customers	0.4	1.5	6.9	34.2	56.9	4.46
Flexibility should be given for monthly repayment, for example payment holiday	0.4	2.7	14.6	33.8	48.5	4.27
It should not compete on prices, but should stress on its unique features	1.9	8.5	13.8	30.4	45.4	4.09

8.9 EXPLORING CUSTOMERS' EXPECTATIONS ON ISLAMIC HOME FINANCING AND THEIR CONCERNS IN COMPARING BETWEEN ISLAMIC AND CONVENTIONAL HOME FINANCING THROUGH FACTOR ANALYSIS

This section aims to further the analysis by using factor analysis to analyse customers' expectations from Islamic home financing as represented by the perceptions of the respondents and also analyse their concern in comparing between Islamic and conventional home financing.

Factor analysis is a statistical method of data reduction technique used to reduce a large number of variables to a smaller set of underlying factors that summarise the essential information contained in the variables. There are three important steps to be considered in conducting factor analysis. The first step is to assess the suitability of the data for factor analysis. The second step involves factor extraction which involves determining the smallest number of factors that can be used to best represent the interrelations among the set of variables. The third step is factor rotation and interpretation.

As regards to the first step, this is done by analysing the sample size and the strength of the relationship among the variables. As a general rule, the larger the sample, the better it would be for the analysis. A sample size of 100 is acceptable, but sample sizes of 200 and above are preferable. For the purpose of this research, the size of sample that was used was 260, which is more than preferable size of 200. As for the strength of the inter-correlations among the items, Tabachnick and Fidell (2007) recommend an inspection of the correlation matrix for evidence of coefficients greater than 0.3. If few correlations above this level are found, then factor analysis may not be appropriate.

As for the second step, it can be said that there are various methods of factor extraction. For the purpose of this study, factor analysis is conducted using principal component analysis (PCA). The PCA is concerned with specifying a number of factors to account for the maximum amount of variance in the data. Other techniques that were also used to help in deciding on the number of factors to retain is the Kaiser's criterion and scree test. Kaiser recommended retaining all factors with eigenvalues of 1.0 or greater than 1.0. This criterion is based on the idea that the eigenvalues represent the amount of total variation explained by the factor and that an eigenvalue of 1.0 represents a substantial amount of variation.

The third step involves trying to interpret the factors that have been extracted. In order to help the interpretation process, the factors are rotated and the way the pattern of loadings (correlation) are presented makes it easier to interpret, namely by showing the variables which clump together. Variables which most highly correlate with the first factor are clustered together and arranged in descending order according to the size of their correlations. Likewise, variables which load strongly with the second factor will form the second factor, and so on. A factor loading is a correlation coefficient showing how much weight is assigned to that factor. The higher the loading, the more that variable belongs to that factor.

8.9.1 Important Factors in Determining Customers' Expectation of Islamic Mortgage

This section focuses on clustering the important factors utilised by the participants in determining their expectation on Islamic mortgage.

Table 8.38: KMO and Bartlett's Test Result for the Customers Expectation on Islamic Mortgage (Q17)

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.	.867
Bartlett's Test of Sphericity	Approx. Chi-Square
	1160.555
	Df
	55
	Sig.
	.000

The result from Table 8.38 shows that the KMO result obtained a ‘middling’ value of 0.867 that is regarded as high partial correlation indicating the suitability of sample size to conduct factor analysis. The result obtained from the Bartlett’s test of sphericity also indicates that it is statistically significant since the result is lower than 0.05, indicating the sufficient correlation exists among the variables.

In Table 8.39, there are two factors with eigenvalues greater than 1 (4.937 and 1.278). This initial analysis, therefore, resulted in a two-factor solution. That is, these 11 variables can be simply reduced to two components, each of which explains a particular amount of variance in the items. In this case, Factor 1 explains 31.07% and Factor 2 explains 25.42% of the total variance. Together, these two factors explain a total of 56.5% of the variance.

Table 8.39: Total Variance Explained on the Customers' Expectation on Islamic Home Financing

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	4.937	44.878	44.878	4.937	44.878	44.878	3.418	31.077	31.077
2	1.278	11.622	56.500	1.278	11.622	56.500	2.796	25.423	56.500
3	.850	7.723	64.223						
4	.776	7.055	71.278						
5	.655	5.954	77.231						
6	.605	5.503	82.735						
7	.525	4.776	87.510						
8	.465	4.226	91.736						
9	.366	3.329	95.066						
10	.324	2.943	98.009						
11	.219	1.991	100.000						

Extraction Method: Principal Component Analysis.

Note: The Factors/Components are listed in Table 8.40

Table 8.40: Rotated Component Matrix on Customers' Expectation on Islamic Home Financing

	Component	
	Sprit and Governance Aspects	Technical Aspects
it should be <i>Shari'ah</i> compliant	.733	.108
flexibility on term of repayment either fixed or variable rate should be given according to the need of customers	.270	.607
it should not compete on prices, but should stress on its unique features	.170	.570
it should comparatively be cheaper	.335	.602
flexibility on repayment period should be given according to the needs of customer	.204	.768
flexibility should be given for monthly repayment, for example payment holiday	.074	.785
suitable product should be provided for completed houses and houses under construction	.549	.497
explanation should be provided on working mechanism of the product and implication of it	.699	.352
it should reflect the true spirit of Islam as required by <i>maqasid</i>	.789	.205
excellent quality services should be provided	.800	.256
it should be able to safeguard customers' interests	.754	.214

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 3 iterations.

Table 8.40 further depicts that by employing a Varimax technique in the orthogonal rotation method to the two components distribution in Table 8.39, that how each factors are distributed under the two components by categorising the variables according to the highest loading values. The factor loading values obtained are 0.5 and above that suitably fit one of the two factors retained. These two components are named according to the factors distributed under each one of them.

As can be seen in Table 8.40, the first component is consists of six variables or factors with the loading ranging from 0.549 to 0.800. The items that fit this component are 'it should be *Shari'ah* complaint' (0.733); 'suitable product should be provided for completed houses and houses under construction' (0.549); 'explanation should be provided on working mechanism of the product and implication of it' (0.699); 'it should reflect the true spirit of Islam as

required by *maqasid*' (0.789); 'excellent quality services should be provided' (0.800) and 'it should be able to safeguard customers' interests' (0.754). All these items that are clustered to the first factor seem related to the substance. Therefore, it is named as 'spirit and governance aspect'.

The second factor with loading ranging from 0.570 to 0.785 consists of five items namely 'flexibility on term of repayment either fixed or variable rate should be given according to the need of customers' (0.607); 'it should not compete on prices, but should stress on its unique features' (0.570); 'it should comparatively be cheaper' (0.602); 'flexibility on repayment period should be given according to the needs of customer' (0.768); and 'flexibility should be given for monthly repayment, for example payment holiday' (0.785). As can be seen, these items are associated with the technical related matters and therefore this component is termed as 'technical aspect'.

Therefore, the results suggest that in the structuring of Islamic mortgage the spirit and governance, and technical aspects should be considered as important. Both aspects become equally important in fulfilling the expectation of the respondents, particularly to determine the future of Islamic mortgage. Capable of fulfilling these aspects would render the Islamic banks to retain the existing customers and attract the new one irrespective of religious affiliation.

8.9.2 Important Factors in Comparing between Islamic and Conventional Home Financing

After identifying the customers' expectations of Islamic mortgages, the following section focuses on clustering the important factors utilised by the participants in comparing Islamic and conventional home financing. For this factor analysis is conducted.

Table 8.41: KMO and Bartlett's Test Result on Important Factors in Comparing Islamic and Conventional Home Financing

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.		.883
Bartlett's Test of Sphericity	Approx. Chi-Square	1037.811
	Df	36
	Sig.	.000

As can be seen in Table 8.41, the KMO result obtained a 'middling' value of 0.883 that is regarded as high partial correlation indicating the suitability of sample size to conduct factor analysis. The result obtained from the Bartlett's test of sphericity also indicates that it is statistically significant since the result is lower than 0.05 indicates that sufficient correlation exists among the variables. This indicates that the data is appropriate for factor analysis; and therefore 'extraction method' based on PCA utilised to produce the individual Eigen values and explanatory power of the components.

The result in Table 8.42 shows that, from the factors given, the results suggests only two components solution by retaining two factors that have eigenvalues more than 1. In this situation, there are two factors that will be retained, since the eigenvalues are 3.694 and 2.903 respectively. This means that the original nine items can be simply reduced to two factors, and hence two component solution. In this case, component 1 explains 41.04% and component 2 explains 32.25% of the variance. Together these two factors explain a total of 73.3% of the variance, which should be considered rather high explanatory variable, nearly the 75% of the total variation.

Table 8.42: Total Variance Explained on the Important Factors in Comparing Between Islamic and Conventional Home Financing

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	5.384	59.819	59.819	5.384	59.819	59.819	3.694	41.044	41.044
2	1.213	13.479	73.298	1.213	13.479	73.298	2.903	32.255	73.298
3	.550	6.115	79.414						
4	.528	5.863	85.277						
5	.351	3.899	89.176						
6	.302	3.352	92.528						
7	.289	3.210	95.738						
8	.220	2.442	98.180						
9	.164	1.820	100.000						

Extraction Method: Principal Component Analysis.

Table 8.43: Rotated Component Matrix on the Important Factors in Comparing between Islamic and Conventional Home Financing

	Component	
	Service Quality	Financial Technicalities
amount of monthly repayment	.226	.881
period of repayment	.254	.897
term of repayment	.349	.829
quality of customer services	.811	.245
speedy processing and approval	.719	.338
convenient repayment system	.691	.481
variety of product	.668	.402
free consultation and enquiries	.860	.125
capability to safeguard the customers' interests	.785	.230

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 3 iterations.

By employing Varimax technique in orthogonal rotation method to the two components as shown in Table 8.43, the result shows the factors are reduced to two components and categorized the variables according to the highest loading values. The factor loading values obtained are 0.5 and above that suitably fit one of the two factors retained.

The first factor from table consists of three variables (items) with the loading ranging from 0.829 to 0.897. The items that fit this factor are 'amount of monthly repayment' (0.881); 'period of repayment' (0.897) and 'term of repayment' (0.829). All these items that are clustered to the first factor seem related to the price of the product and therefore, this components is named as 'financial technicalities'.

The second component with loading ranging from 0.668 to 0.811 consists of six items namely 'quality of customer services' (0.811); 'speedy processing and approval' (0.719); 'convenient repayment system' (0.691); 'variety of products' (0.668); 'free consultation and enquiries' (0.860) and 'capability to safeguard the customers' interests' (0.785). These items can be related to the treatment offered by the mortgage providers and therefore it is named as 'service quality' factor. The results suggests that, besides financial aspect of Islamic mortgage product, service quality aspect do play an equal important factor to determine the respondents' satisfaction toward their mortgage chosen. Therefore, while offering Islamic

mortgage product, Islamic banks should always stress on these two aspects in order to compete with the conventional counterparts.

8.10 CONCLUSION

This chapter has discussed the findings from the primary data based on questionnaire survey which are analysed by various statistical methods; descriptive analysis, cross tabulation, Kruskal-Wallis test, Man Whitney U-test and factor analysis. All in all, the survey has revealed important information on the Islamic mortgage from the demand side of the industry, as participants are the mortgage holders.

As the results demonstrate more than three quarters of the respondents had a 'mortgage relationship' of at least two years' duration with their respective providers, which implied that the respondents were quite familiar with the mortgage operation particularly when expressing their perceptions and expectations to their mortgages chosen and to Islamic mortgage particularly.

In addition, the findings show that the main reason for respondents to use Islamic housing finance is their religious belief; the reason for respondents not using Islamic housing finance is the expensive monthly repayments; that the monthly repayment amount is the most important factor for respondents when making comparisons between Islamic and conventional mortgage. The results also indicate that there is also a general perception that Islamic mortgage is more expensive than the conventional counterpart. In terms of expectations, the result shows that respondents' main expectation on Islamic mortgage is that it should be able to safeguard the interests of the customers besides providing excellent quality services and *Shari'ah* compliant products which can reflect the true spirit of Islam as required by *maqasid* for the blessing of the human beings as a whole.

CHAPTER 9

CONTEXTUALISING THE FINDINGS: AN INTERPRETATIVE DISCUSSION

9.1 INTRODUCTION

As discussed in the preceding chapters, MM home financing is implemented with the aim to gradually phase out the contentious mode of BBA home financing product from the Islamic finance sector. This is due to the fact that the use of *bay' al-inah* contract in the BBA have been criticised and is not considered as permissible by a majority of Muslim scholars, particularly in Middle East countries. However, the product has been in the IBF market in Malaysia since the inception of the first Islamic bank, Bank Islam Malaysia Berhad in 1983, and remains as a sole product of Islamic home financing. In addition, at the national level, this sale/debt based home financing of BBA is also subjected to various operational issues that include form over substance, expensive selling price in the case of default, rebate, and various legal disputes that have been reported in court cases, as explained in Chapter 4.

It is further claimed that profit and loss sharing product is the most distinguished product in promoting Islamic banking market including in Islamic housing market in order to balance the current state of Islamic banking market which heavily rely on debt/sale-based financing.

This research, hence, aimed at exploring and examining various aspects of MM homes financing with the objective of contributing to the paradigm shift in the provision of home financing. It should be noted that to the best of the researcher's knowledge, no other piece of academic research has attempted to study this topic in a comprehensive manner, as this study has attempted. As discussed in an earlier chapter, the available studies on similar subject matter have mainly considered this product to be a better alternative to BBA by theoretically providing the comparison between BBA and MM home financing. Others have also considered the legal issues and purchase undertaking issues in MM home financing in Malaysia, and there is also one study which proposed a new approach to MM home financing in Malaysia.

This research, therefore, aims to analyse the challenges and prospects of MM home financing in Malaysia in a comprehensive approach by using empirical data from interviews and questionnaire surveys. The results are expected, therefore, to fill a significant gap in current scholarship by providing vital analysis on the evaluation of current state of MM home financing both from the demand and supply side, as to whether this product which is derived from a profit and loss sharing contract is a potentially better alternative to BBA home financing whereby it is consider closer to the spirit of Islamic finance as expressed by *maqasid*.

As explained in Chapter 1, the research's objectives are: (i) to obtain a clear understanding of MM home financing practises from the Islamic banks and experts (*Shari'ah* scholar/advisor, Islamic economists, legal experts and regulator) in sector; (ii) to analyse legal framework and its adequacy in governing the implementation of MM home financing; (iii) to critically analyse operational issues/constraints and problems in the implementation of MM home financing; and (iv) to examine the prospects of MM home financing through the customers' awareness, perceptions and expectations.

In providing empirical meaning to the study, interview and survey results are presented in Chapter 7 (Analysis of Interview Data) and Chapter 8 (Analysis of Survey Data). This chapter is, therefore, aims to provide an integrative analysis by discussing the main results and findings from all the empirical chapters together with the past literature as presented in the survey chapters through the social constructive manner as contribution of the researcher.

For the purpose of clarity and to provide a structured approach to the discussion, this chapter is divided into five main sections: Section 9.2 discusses 'operation of MM home financing in Malaysia'; Section 9.3 present a discussion on 'legal structure and its adequacy' in locating the MM home financing; Section 9.4 extends the discussion to 'issues and problems in implementing MM home financing in Malaysia'; and Section 9.5 discusses the 'future prospects of MM home financing in evaluating the current practice of MM home financing in Malaysia'; and Section 9.6 provides 'conclusion'.

9.2 REFLECTING ON THE FINDINGS IN RELATION TO OPERATION OF MM HOME FINANCING IN MALAYSIA

The interview findings in Chapter 7 revealed that MM home financing in Malaysia is an attempt to move away from the contentious BBA home financing which is based on *bay al-inah* contract. With such a move, a paradigm shift is aimed at in terms of attempting to balance the heavy used of debt based financing in Islamic finance as well as Islamic home financing. The implementation of such profit and sharing contract in the form of MM, which is accepted globally by the countries having Islamic banking sector, is very important as Malaysia is recognised as one of the leading countries in promoting and upholding Islamic banking market. Available body of knowledge also substantiates this statement in arguing that the introduction of MM home financing is to facilitate the initiative as Malaysia becomes one of International centre for Islamic finance which is known as MIFC (Samsudin, 2008: 6).

In terms of its operation, as explained the data revealed that MM home financing involved combinations of three Islamic contracts: *musharakah*, *ijarah* and sale, which all together applied in the whole process of financing in one form. To recapitulate, *musharakah* contract is applied when the customer (registered owner) and the bank (beneficial owner) share the ownership over the house based on the proportion paid for the full house price which is typically 90% (for the bank) and 10% (for the customer). Then, *ijarah* contract is further applied when the banks lease out their shares to the customer in which the customer entitled to stay at the house. At the same time, the customer will also redeems the banks' shares as the ultimate intention is to exclusively own the house, and this is evidenced via the sale contract. In addition, there are also purchase undertakings in which the customer promises to gradually purchase the banks' portion monthly and purchase all the banks' portion during the event of default. Besides, as has been agreed before by both parties, both maintenance and *takaful* over the house is solely borne by the customer.

In responding to these issues, the findings from the interviews suggest that the implementation of MM home financing clearly indicates a move away from BBA, but it does not necessarily mean of moving completely away from debt based financing. Thus, in an informed manner through the findings in this study and also through material available in the literature, the issues that should be considered are:

- (i) The use of purchase undertaking particularly at the event of default, whereby the customer is obliged to purchase all the outstanding banks' shares results in indebtedness on the part of the customer. Such practice, to a certain extent, serves as capital guarantee over the bank's credit risk. It is, therefore, against the spirit of *Shari'ah* to place extra unnecessary burden on the customer when he/she is genuinely unable to pay the rental, but has to bear the extra burden as an obligation created from indebtedness.

As such, the use of purchase undertaking should be done with necessary caution, as it will contradict the basic principles of profit and loss sharing contract, as it cannot be systematically made dependant on collateral or guarantees to reduce credit risk (Sundararajan and Errico, 2002; Smolo, 2010; Naim, 2011).

In responding to the additional burden created through form nature of MM home financing, one of the interviewees opined that Islam promulgates via *Quranic* verses in *Surah Al-Baqarah* (verse 280) that the lender should postpone debt repayment if the borrower is genuinely unable to pay his/her debt. Therefore, it is understood that Islam prohibits the lender to impose unnecessary burden on the borrower. Instead, the lender may reschedule debt, if necessary, which will better suit to the *maqasid*.

- (ii) As the findings suggest, the practice of transferring all the obligations on the maintenance and *takaful* solely to the customer (even has been agreed upon by both parties) may suggest that the bank does not 'truly' have ownership risk over the house. Hence, such a practice does not render genuine *musharakah* when one party has superior advantage over the other party.

Such a conclusion reached by this study is not shared by the previous literature, because they suggest that the use of MM in home financing will force the bank to bear an ownership risk and progressively pass the ownership to the customers (Taib *et al.*, 2008). In addition, such a practice seems to mimic the debt based financing. Siddiqi (1983) claimed that risk exposed in debt based financing are typically insurable and are actually against and passed over the other party. This is further supported by Ayub (2010) when he stressed that the cardinal principle in profit sharing contract, risk cannot be separated from the ownership. In other words, both parties should bear risk to justify any reward.

This should be considered as an important response to the nature of MM home financing, which aims to correct the BBA home financing contracts.

- (iii) As informed by the findings of this study, it can also be noted that the name of the product itself and the principles of contracts applicable are important factor. Albeit the word *musharakah* is defined as partnership, which is equity instrument in nature, the word *mutanaqisah* on the other hand, connotes to the meaning of ‘diminishing’ which is designed to be perfected by two distinct debt-like instruments namely leasing and sale contracts. As such, MM home financing is indeed not a pure equity contract, but rather than a combination of debt and equity contracts.

Although the contracts involved are not purely equity financing, the requirement for the product to observe the unique features of the contract should be paramount. For instance, how far the term partnership principles are adhered to in order to truly reflect equity financing part, and how far the terms and conditions for *ijarah* and sale are adhered to in the implementation of MM product remains important challenges to be overcome.

- (iv) Based on the findings, it can be argued that there is a need for a modification to the main principles of profit and loss sharing contract that is allowable by *Shari’ah*, however, there should always be certain parameters for the modification. In other words, any attempt to modify the main principles of profit and loss sharing in order to suit the legal requirements, norms or practices are permissible subject to certain parameters as to ensure the spirit of *Shari’ah* and *maqasid Shari’ah* must constantly be upheld. This is also supported by the position taken in the available literature that the translation of profit and loss sharing modes into reality can be made possible without significantly compromising its principles of *musharakah* which is based on the classical Islamic jurisprudence. Proper safeguarding and effective parameters are needed to ensure the efficiency and equity to the parties (Farooq, 2007:84; Iqbal and Khan, 1998: 65; Naqvi, 2000: 42).

In concluding, the findings in this study suggest that current practice of MM home financing is inconsistent with the available literature when they claimed that since the contract of MM home financing is based on the profit and loss sharing concept, it will be able to protect the interests of the contracting parties and promote the well-being of the

society which reflects the spirit of Islamic banking (Rosly and Bakar, 2003; Taib *et al.*, 2008).

Moreover, it can be understood that failing to strictly observe these requirements and adhere the basic principles of profit and loss sharing contract may lead to various issues relating to the implementation of this product particularly from *Shari'ah* perspectives. The implementation of MM home financing in Malaysia should be made a better alternative compared to the previously used of BBA home financing as MM product should remove all the unnecessary burden available in BBA home financing and conventional home loan.

9.3. REFLECTING ON THE FINDINGS IN RELATION TO THE LEGAL STRUCTURE FOR MM HOME FINANCING AND ITS ADEQUACY

This section focuses on the legal environment in which MM is operated in Malaysia, and whether the current laws are adequate to govern its implementation. Based on the interviews, there are two main findings were revealed.

(i) MM home financing is conceptually based on the Islamic principles, but it is legally operated within conventional principles of laws with the spirit of debt financing still being dominant. In an informed manner, it can be understood that there are several conclusions can be drawn from the opinions of the interviewees, which are as follows:

(ia) The hybridity of the contracts available in MM home financing: The application of hybrid contract of equity and debt instruments namely partnership, *ijarah* and sale to form the entire process of home financing is inevitably a successful translation of *Shari'ah* concept of *muamalah* into a reality. As such, based on this premise, there is no doubt that a majority of the interviewees held that MM home financing is conceptually based on Islamic principles. In other words, the use of these Islamic contracts in MM home financing in Malaysia is positioned the product to be conceptually based on *Shari'ah* principles. However, in practice, there are certain requirements that need to be fulfilled, for instance, instead of trust, the banks take charge over the property as legal requirements particularly to ensure that the contracts are enforceable before the court of law. In this situation, without proper caution and

parameters, the operation of MM home financing may stray away to mirror the debt based financing (Ka, 2009; Smolo, 2010).

(ib) Current legal framework in Malaysia is not duly in place to accommodate equity financing: It is also worth mentioning that the current legal requirements in Malaysia which is originated from the English law is not exhaustive to accommodate equity financing, thus making MM home financing legally operated based on the conventional principles of law with the spirit of debt financing being dominant. In other words, the Malaysian legal system, particularly banking law and the land code are drafted according to the nature and requirements of conventional banking system, which is based on interest banking whose ultimate motive is profit maximisation. Although there is specific statute to regulate the establishment and the operation of Islamic banks in Malaysia, which is the Islamic Banking Act, it mainly remains as only regulation without specifying any statement of substantive law to be applied in cases of dispute (Thani, 2003).

As such, in the absence of proper parameters which are driven by profit motive to address this lacunae, may result to using the same procedure applicable in conventional mortgage practices to MM home financing (Smolo, 2010). Therefore, it can be suggested that inadequate legal framework appear as a challenge in regulating Islamic finance at the national level of many developing countries. Such a conclusion drawn from the findings of this study is supported by Ahmad and Hasan (2009), Askari *et al.* (2009), Al Mutairi (2010) and Shirazi *et al.* (2012).

(ic) Gaps in appreciating the whole process of MM home financing: In the real practice, not many *Shari'ah* advisors have expertise to understand and evaluate the legal documentations, so as to determine the operational side of the product, as their background is only limited to *Shari'ah* or economics/finance. Hence, they tend to approve the products solely based on the structure or principles, without giving consideration on the whole issues particularly on the social and economic impact, intended by *maqasid Shari'ah*. This situation can be one of the reasons as to why in certain circumstances, the provision in the legal documentations appear to be contrary to the equity principles as evidenced by the interview findings of this study.

To explain further, the provision of event of default in the MM home financing agreement seems contradict the equity principles. In the event of default, the use of purchase undertaking on part of the customer may result in customer becoming indebted, where he/she

is obliged to pay all the outstanding shares to the bank (Smolo, 2010). Therefore, such practice appears to be a capital guarantee structure because this arrangement is made as a mean to facilitate the bank with the ability to get the full amount of the proceeds from the auction of the property. If the property remains under the joint ownership, the bank may only get partial amount of the property, which is subject to the bank's ownership ratio in the property ownership. This argument is supported by Naim (2011).

The above scenario is a clear example on how the equity principle applicable in MM home financing is tarnished by its operation. Furthermore, interview findings revealed that in most cases involving the operational legal matters, the opinion of legal advisor/experts will prevail over the opinion of *Shari'ah* advisors. In addition, the bankers who are mostly made a business decision based on profit maximisation motive would likely to translate its operation of MM home financing in less risky manner which is as similar as the conventional practices. More importantly, MM financing requires the banks to increase a risk weight about 200-300 percent which is considered as burden for them. This is because, currently they only allocate the risk weight for about 50 percent for their conventional and BBA product. As such, this situation may create a gap between the concept and operation of MM home financing product and be more likely to move away from the spirit required by *maqasid Shari'ah* (Smolo, 2010).

Hence, in order to have a product reflecting the spirit of *maqasid Shari'ah*, as the findings of this study suggest *Shari'ah* scholars should be expected to be able to raise possible issues and challenges related to the value chain particularly, in the operational sides of the products offered. In other words, the functions of *Shari'ah* advisors are not to approve and endorse the banks' products, but ensure their compliance through directing, supervising and reviewing their operations.

In addition, based on the AAOIFI standards, the *Shari'ah* advisors are primarily specialised jurists in the *fiqh muamalat* and Islamic finance. Therefore, they are entrusted with the duty of directing, reviewing and supervising the activities related to Islamic finance to ensure they comply with *Shari'ah* rules and principles. Discussion among *Shari'ah* scholars/ advisors, bankers, Islamic economists and legal experts who are involved directly in the implementation of MM home financing should also be addressed in order to further appreciate the concept of MM home financing in a manner to uphold the spirit of Islam and *maqasid Shari'ah*. Such an initiative can be taken up by the central banks through the forum made among these parties in order to fill up the gap in their approaches.

(ii) As regard to legal adequacy, there are mixed response among the interviewees. Most of the practitioners and bankers agree that the current legal structure is adequate to govern the implementations of MM home financing. However, the findings of this study suggest that modifications may be necessary to accommodate its need in line with *Shari'ah* principles. On the other hand, the second view held by the *Shari'ah* scholars and economists opined that the current legal structure completely needs to be revamped. It requires a new law to be enacted to accommodate the proper implementation of equity financing in Malaysia. The findings reveal several reasons discussed as follows:

(iia) The divergence of opinions on this issue indirectly demonstrates their involvement, knowledge and awareness to this product. The *Shari'ah* scholars may have more knowledge and awareness of the true concept of *musharakah* product. Therefore, they may want to see the proper application of equity financing through specific statute. In absence of a proper and specific statute would make the MM home financing operate with the legal structure similar to its conventional counterpart where the spirit of debt financing being dominant.

(iib) It should, on the other hand, be noted that the bankers who are involved directly with MM are familiar with the conventional system, which is the dominant system in the market for a long time with established rules and policies. Therefore, its operation appears to be much easier in practice. It can therefore be argued that the current state of the legal framework which is conventional in nature, may to a certain extent, adequate to warrant the operation of MM. However, authorities should aim at developing proper legal mechanism for the provision of MM rather than opting for a pragmatistic solution.

(iic) Albeit difference responses on this issue, all of the interviewees share the common views that 'something' needed to be done to improve the current legal framework for MM product irrespective whether it involves the amendments to existing laws or enacting a new statute. Hence, consistent improvement and amendment to the legal framework will ensure the development of Islamic finance, particularly for the equity financing. In this attempt it is essential to develop Islamic mortgage structures in line with the principle of profit and loss sharing. This requires different treatments and consideration to be given to legal issues such as owner liability, the consequences of contracts and the event of default. This finding is supported by the studies available in the literature including Wilson (2002).

In moving toward this direction, however, an attempt must be made by the Central Bank of Malaysia for the formation of a committee mandated with the harmonisation of law, which should be entrusted in ensuring parallel developments of the Islamic finance and conventional system (Thani and Hussain, 2010). In addition, the most recent development of Malaysia's legal infrastructure for Islamic finance was the enactment of the Central Bank of Malaysia Act 2009, which accords the formal recognition to the dual financial system practiced in Malaysia. However, in terms of amendment to the current statute in order to suit with equity financing, it is observed that bureaucracy may to certain extent delay the process. This is because, the relevant statute for instance the land code, is not fall directly under the jurisdiction of the Central Bank of Malaysia. Moreover, most of the matters related to IBF receive less political interests. This situation is further supported by the interview findings and by Ka (2009).

In order to accommodate such a modification, qualified pool of talent as reported by Aziz (2006) inevitably remains the valuable asset in order to support the development of Islamic finance, and reflect the spirit of *Shari'ah* and uphold justice for the economic development in Muslim societies. Thus, it is hoped that the implementation of MM home financing would become an impetus for further reliance to equity financing in Islamic finance in Malaysia.

In term of its implementation, it should be noted that the operation of MM home financing is considerably new as it was implemented 7 years ago. Therefore, this current practice remains unprecedented since there are never tested before the court of law. Compared to BBA home financing, the legality of its contract has been challenged after 25 years in IBF market (Hasan, 2008).

To conclude, the existing literature and the findings of this study imply that MM home financing is conceptually based on *Shari'ah* principles. However, since the current legal structure is not duly in place to accommodate equity financing, the influence of debt based financing or conventional loan dominate its operation. This problem is further aggravated by the gap opinion and practice of and between the *Shari'ah* advisors, bankers and the legal experts in interpreting the whole concept of MM home financing into practice. The nature of governing law in Malaysia which is based on common law would also make a truly Islamic contract difficult to apply, unless the country is governed by Islamic rules, which also supported as a position by Billah (2006).

9.4. REFLECTING ON THE FINDINGS IN RELATION TO ISSUES AND PROBLEMS IN IMPLEMENTING MM HOME FINANCING IN MALAYSIA

The interview results in Chapter 7 suggest that there are many issues including legal, *Shari'ah* and operational, faced by the Islamic banks in promoting and implementing this new home financing based on MM. These issues are expected since MM home financing has recently been introduced in Islamic banking and finance market for the last 7 years.

It can be argued that the issues related to the legal framework will continue to exist until the current legal framework is properly in place to accommodate the implementation of equity financing. In particular, the current practice related to registration of ownership between the bank and the customer, and validity of the charge registered over the property, as also reported by Haneef *et al.* (2011), will continue to remain uncertain, because there is no a single precedent to confirm such practices. This could be possible in the future in particular when the current implementation and operation of MM home financing has received a recognition by the court of law. In addition, the hope of having a standardisation of MM legal documentations can be considered important to reduce the transaction cost by the banks.

Regarding the use of *wa'd* or a purchase undertaking in event of default, imposing such non-logical steps on the customers to protect the banks' interests would tarnish the effort of the government in promoting equity based financing. This is because, the use of purchase undertaking, to a certain extent, contradicts the spirit of *Shari'ah*. The *Shari'ah* board of the Islamic banks should, therefore, always ensure that the *Shari'ah* principles, both conceptually and operationally are intact in all circumstances.

As such, the role of the *Shari'ah* advisors is considered vital in ensuring that the right action is done and seen to be done. The *Shari'ah* boards of the Islamic banks should always ensure the operation of MM home financing should be in line with the principles of profit and loss sharing. This effort is crucial as the ultimate intention of the government in introducing MM home financing is to further promote the use of equity based financing and move away from over reliance to debt based financing particularly BBA home financing. Otherwise, without proper adherent to the *Shari'ah* principles relating to profit and loss sharing contract for MM home financing and sale contract for BBA home financing, the best mode of Islamic home financing is *murabahah*, instead of BBA (*inah* contract) and MM. This argument is supported by Naim (2011) and Ka (2009).

The interview findings in Chapter 7, a number of problems faced by the banks in the provision of MM are articulated, which play an important role influencing the acceptance of MM. These include: risk weight; additional administrative work; additional IT system; no standard parameters; uncertainty of legal framework; *Shari'ah* requirement vs business decision; equity financing vs debt financing and lack of marketing. The research has found that 'courage' or 'dare to change' is the most crucial, as bankers must now realise that besides profit maximisation motive, they face different type of financing, an equity based financing capable of fulfilling the interests of all parties.

This new dimension of financing inevitably requires the changes of mind set from traditional bankers to bankers with the courage to invest or share higher risk with the higher return. The willingness to change will eventually justify the profit made by the banks and it seems closer to the principles of Islam and spirit of *Shari'ah*. Based on this, Naim (2011) and Chapra (2011) also reported that based on hadith: *al kharaj bi al-daman*, meaning that the revenue comes with taking risk.

The interview finding further revealed that the implementation of MM home financing to certain extent would benefit the Islamic banks which have conventional parents. The IT system used by conventional counterpart seems to benefit its Islamic banks in the manner that the same IT system used for conventional mortgage payment would similarly be used for the schedule payment in MM home financing except the instalment and interest in the former is changed to instalment and rental. This reason indeed well explained why most of the Islamic banks offering MM in the market are originated from conventional banks.

In addition, it can be further argued that the problem faced by the customers which is the lack of knowledge of the facility is clearly related to marketing issue and education. Such a consequence may happen due to the current practices in the market, where most of the lawyers whose responsible for preparing legal documentation for Islamic mortgage do not really explain the principles of the contract, while advising their clients in signing the facility agreements. In a typical situation, most clients are advised where to place their signatures in order to execute the facility agreements with the banks. Absence of explanation on the principles used and the consequences of the contract entered into the parties will leave the customers in the state of ignorance and lack the knowledge of the facility. Moreover, the interview findings support that legal documentations used in every transaction are drafted by the legal experts using legal terms or jargons that are difficult to be understood by the lay

person, without an explanation given from the lawyers. This view is supported by Yusof and Fahmy (2009) found similar results. Therefore, it is suggested that the explanation on the principles of contract used in the facility should be given by the lawyer to the customer in order for the customer to know his rights, liabilities and the consequences of the contract. This practice will ultimately increase the customers' knowledge of the *Shari'ah* contract and at the same time, appreciate the process of Islamic housing finance. The interview finding further confirmed that the customers would rather choose MM home financing if they understand how this contract works and benefit them.

Apart from that, this research suggests that marketing the product is crucial in order to achieve market sustainability. Since MM home financing was implemented 7 years ago, it requires continuous effort in promoting it in Malaysia. Different approaches may be necessary to promote it to Muslim and non-Muslim. The demand for MM product from non-Muslim is quite promising as, one of the bankers in the interview revealed that more than 60% of their existing customers are non-Muslim. In all circumstances, the most fundamental thing is that Islamic product which strictly adheres to the *Shari'ah* principles will further guarantee the *maqasid Shari'ah* in line with spirit of Islam, and the ethical merits and advantages of the product will attract customers irrespective of their religion affiliations.

9.5 REFLECTING ON THE FINDINGS IN RELATION TO THE CURRENT PRACTICE AND PROSPECT FOR MM HOME FINANCING IN MALAYSIA

This section concentrates on the evaluation of the current practice of MM home financing in Malaysia. It consists of various sub sections which deal with the respondents' awareness of home financing products, namely BBA, MM and *istisna'*, and their perceptions and expectations on Islamic home financing in Malaysia. The evaluation on current practice of home financing in Malaysia, which includes the perceptions and expectations of the respondents on Islamic mortgage is significant in determining the future prospect of MM home financing.

9.5.1 Respondents' Awareness on Islamic Home Financing Products

Islamic home financing has been offered by the Islamic banks since the introduction of IBF in the market in Malaysia for 30 years ago. Since then, there are many research conducted on the customers' awareness of the prohibition of *riba* in Malaysia (Kader, 1999, Samad, 2007, Karim 2010) and awareness on Islamic deposit account (Karim, 2010). Besides, Hamid and Othman (2009) find out that a majority of respondents do not know the concept and *Shari'ah* terms used in the *takaful* contract. This paper hence also aimed at investigating the awareness of Malaysian customers on MM Islamic home financing product, as it is expected that after 7 years of being in the market a certain level of awareness should have been developed.

Therefore, this section discusses the customers' awareness of Islamic home financing products and it is based on the following hypotheses:

Hypothesis 1(i): The majority of the respondents who opt to Islamic mortgage do have fair level of awareness on the Islamic mortgage product based on BBA contract.

Table 8.12 of Chapter 8 indicates that 74.4% of the respondents are aware of the BBA home financing product. This suggests that the null hypotheses that a majority of the respondents do have fair level of awareness on BBA home financing can be accepted. This result is expected as BBA mode of financing has been in the Islamic banking and financial market for almost 30 years. Moreover, BBA home financing is the 'only' product offered by all the mortgage providers namely Islamic banks, companies, cooperative and the government.

This finding can be further substantiated by the earlier literature, which evidences that there is a high level of awareness of the Islamic banking products in Malaysia. However, it is worth noting that the level of awareness of the banking product does not guarantee the customers' understanding on the technical terms and aspects of the product (Haron *et al.*, 1994; Metawa and Almosawi, 1998; Hamid and Nordin, 2001; Ahmad and Haron, 2002; Bley and Kuehn, 2004; Okumus, 2005; and Karim, 2010). Customers who are not aware of the BBA home financing product being available in the market nearly 30 years, their awareness is only concentrated on the existence of Islamic in general as opposed to conventional home financing products such as the specific name of the product. This is supported by Muhamat *et al.*, (2011), who show that as long as the customers know their objective of having the service offered by the bank, they do not really care about the nature of the financial product, such as the name of the product.

In further exploring the awareness issues, sub-hypotheses were formulated in order to further investigate which group of respondents have better levels of awareness. The hypotheses are as follows:

H₁ (i)-1: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on BBA contract across various age groups.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted, since the tested p -value (0.013) was lower than the critical p -value. Therefore, the results suggest that there is statistically significant difference regarding the level of awareness on BBA home financing across various age groups.

Table 8.13 shows that the respondents within age group 31-40 were the highest group, who are aware (61.7%) and very aware (64.1%) on this particular mode of home financing. On the contrary, only 1.7% of them who are above 50, aware of the BBA product. This finding suggests that the respondents within age 31-40 may receive better exposure that has led to a better awareness of the Islamic banking products. This situation can be associated with the efforts made by the government in marketing Islamic banking and finance products particularly they have been in the market more than 30 years. Moreover, based on life cycle hypothesis, there is an increasing need for home ownership for the respondents within this age as they have steady income and most have growing family that requires a proper house to live in. This argument is supported by Tameme and Asutay (2012), where they found that the highest earning group in UK falls within the 35-44 year old age group, and during this age customers' demand for home financing also increased. This factor may influence their awareness particularly when searching and comparing the most appropriate mortgage.

H₁ (i)-2: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on BBA contract across various religious affiliations.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted, since the tested p -value (0.000) was lower than the critical p -value. Therefore, the results suggest that there is a statistically significant difference regarding the level of awareness of BBA home financing across various religious affiliations.

The findings suggest that since Islamic banking is derived from *Shari'ah*, Muslims are the largest group who are aware of BBA. The word 'Islam' used in promoting the home

financing products may attract Muslim, particularly who care for their faiths and try to abstain themselves from the involvement in *riba* that is considered a sin. However, in another perspective, this situation suggests that the marketing of Islamic banking and finance products do not completely reach the target of 'banking for all'. There should be effort for correct marketing measures made by Islamic banks to promote Islamic products not only to Muslims, but also to Non Muslims, based on the advantages of these products over other financial alternatives (Dar, 2005; Tameme and Asutay, 2012). In other word, the marketing of Islamic products should not only stress on the prohibition of *riba*, but may be more on ethical merits of Islamic products (Tameme and Asutay, 2012).

H₁ (i)-3: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on BBA contract across various occupational groups.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted, since the tested p -value (0.000) is lower than the critical p -value. Therefore, the results suggest that there a statistically significant difference regarding the level of awareness of BBA home financing across various occupational groups. The group of respondents who were aware and very aware of the BBA product are manager, professional and academician.

Hypothesis 1(ii): The majority of the respondents who opt to Islamic mortgage do have low level of awareness on the Islamic mortgage product based on MM contract.

The frequency analysis results in Table 8.12 in Chapter 8 indicate that only 40.4% of the respondents are aware of the MM home financing product, suggesting that the null hypotheses that the majority of the respondents do have low level of awareness on MM home financing can be accepted. This result is expected, as MM mode of financing is relatively recent in the IBF market. Moreover, MM home financing is offered by only seven Islamic banks, and yet to be offered by the government as one of the mortgage providers for government officials. Besides, low level of awareness of profit and sharing contract may be due to the marginal use of this equity-based product in the Malaysian market. A study by Karim, (2010) also proved that the respondents have less familiarity with deposit accounts based on profit-sharing contracts, despite the fact that the product has been in the market since the inception of Islamic banks in Malaysia.

Subsequently, further sub-hypotheses are formulated in order to further investigate as to which group of respondents had better levels of awareness. This aims to explore if there are relationship between the results of the hypotheses tested. The hypotheses are as follows:

H₁ (ii)-1: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on MM contract across various religious affiliations.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted since the tested p -value (0.007) is lower than the critical p -value. Therefore, the results suggest that there is a statistically significant difference regarding the level of awareness of MM home financing across various religious affiliations.

H₁ (ii)-2: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on MM contract across various occupational groups.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted, since the tested p -value (0.024) is lower than the critical p -value. The results suggest that there is a statistically significant difference regarding the level of awareness of MM home financing across various occupational groups. The study found that the group of respondents who are aware, and very aware about the MM product are professional, manager and academician.

Hypothesis 1(iii): The majority of the respondents who opt to Islamic mortgage do have low level of awareness on the Islamic mortgage product based on istisna' contract.

The frequency analysis in Table 8.12 in Chapter 8 indicate that only 37.4% of the respondents were aware with *istisna'* home financing product, suggesting that the null hypotheses, 'the majority of the respondents do have low level of awareness on *istisna'* home financing' can be accepted. This result is expected as Bank Islam Malaysia Berhad is the only Islamic bank which offers *istisna'* mode of financing, which is based on contract of *inah*. The only difference between BBA and *istisna'* is that the former is available for completed property, while the latter is for property under construction. Furthermore, as being discussed earlier, in absence of explanation on the nature of *Shari'ah* contract involved by the lawyers advising the clients on mortgage matter, the client will have lack of knowledge about the different contracts used for completed property and property under construction. This finding is supported by Tameme and Asutay (2012), where they found that the majority of respondents in the UK are unaware and uneducated about Islamic mortgage instruments or

models. Particularly, in this study, *istisna'* and MM model remain marginal in the IBF market in Malaysia.

In further probing these issues, the following sub-hypotheses are formulated to locate as to which group of respondents have better levels of awareness. The hypotheses are as follows:

H₁ (iii)-1: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on istisna' contract across various religious affiliations.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted since the tested p -value (0.033) is lower than the critical p -value, which suggests that there is a statistically significant difference regarding the level of awareness about *istisna'* home financing across various religious affiliations.

H₁ (iii)-2: There is no statistically significant difference regarding the level of awareness of Islamic mortgage product based on istisna' contract across various occupation groups.

At $\alpha = 0.05$, the null hypothesis is rejected and the alternative hypothesis is accepted, since the tested p -value (0.028) is lower than the critical p -value. Therefore, the results suggest that there is a statistically significant difference regarding the level of awareness on *istisna'* home financing across various occupational groups. The findings reveal respondents who are aware and very aware on the *istisna'* product is still professional, manager and academician.

9.5.2 Respondents' Perceptions on Islamic Home Financing

The perceptions held by the respondents on Islamic home financing is very significant in determining the future prospects of the Islamic home financing, particularly the MM home financing which is considered as better alternative than the BBA home financing. Thus the following hypotheses are formulated to gauge the participants' perceptions of Islamic home financing, which includes the reason for choosing and not choosing Islamic mortgage; making comparison to decide the best mortgage and if yes, what are the important factors in comparing the Islamic and conventional mortgage; the level of respondents' satisfaction and non-satisfaction, and the reasons of them.

Hypothesis 2: The majority of the respondents apply equal importance to the 'religious factor' along with other criteria as their reason for using Islamic mortgage.

Based on the literature, such as Omer (1993), Kader (1993; 1995), Metawa and Almosawi (1998), Naser *et al.*, (1999), Bley and Kuehn (2004) and Dusuki (2005; 2007), Samad (2007) and Lee and Ullah (2011), there are several factors that may influence the customer in choosing Islamic banking products. These factors include religious/*Shari'ah* compliance, convenience, better technology and services. This study also adopted a similar approach in gauging the customers' reasons for choosing Islamic mortgage in Malaysia. Research in this area is imperative as it will provide the pattern on the customers' patronage factors to Islamic banks, and ultimately determine the future prospects of Islamic banks particularly in retaining existing customers and attracting new ones. In this context, this study is capable of determining the future prospects of MM home financing in Malaysia.

Since the objective of the establishment of Islamic banks is to provide alternative banking to Muslims for interest-free banking system, therefore, it is understood that the main reason for the customers in choosing Islamic mortgage is due to the religious factor. In responding to hypotheses 2, the frequency results in Table 8.26 in Chapter 8 revealed that 97.1% of the respondents rated religious factor as their main reason for choosing the Islamic mortgage in Malaysia. Therefore, based on this premise, the hypothesis is accepted. Moreover, this finding is consistent with the previous studies conducted by Omer (1993), Kader (1993; 1995), Metawa and Almosawi (1998), Naser *et al.*, (1999), Bley and Kuehn (2004) and Dusuki (2005; 2007), Samad (2007), Al Maturi (2010), Tameme and Asutay (2012) and Lee and Ullah (2011).

The findings in this study shows that the second important reason for choosing Islamic mortgage is 'fixed monthly repayment' (95.4%). As discussed earlier, this factor is quite significant for the respondents who wish to manage their household expenses or the cash flow as the amount for mortgage portion is fixed throughout the tenure of financing. In addition, since fixed payment is always understood 'Islamic', it is worth arguing that the respondents' understanding of the issue is very much significant in determining the customers' motivation. The reasons either they are really meant for easily managing the cash flow or, because of 'fixed monthly repayment' factor is normally associated with an interest free banking.

Nonetheless, the survey findings in Chapter 8 reveal that religious factor is not the only reason to choose Islamic home financing. Competitive rate, convenient system and excellent quality services are also important reasons for choosing Islamic mortgage in Malaysia. Therefore, the findings suggest that although most of the customers' patronage factor is

mainly because of faith, they also expect the bank to offer competitive services as similar as the conventional counterpart. As such, Islamic banks have to meet two fold bank patronage factors: religious factor and competitiveness with their conventional counterparts such as in terms of the rate offered, services, convenience and products (Lee and Ullah, 2011).

Responding to the price/rate factor, interview with the bankers reveal that the current MM home financing in Malaysia is competitively offering the same rate with the conventional counterparts. It is, therefore, cheaper than the BBA home financing with fixed monthly repayments. This factor, therefore, is hoped to be able in attracting new customers who ultimately guarantee a bright future for the Islamic banking and finance market particularly Islamic mortgage. Furthermore, the findings from the interview with the Islamic economists reveal that Islamic banks will be able to offer more competitive price compared to their conventional counterparts, if they are offering the rate for MM home financing based on rental index rather than benchmarking to conventional rate. To reiterate, benchmarking to rental index will make the rental vary taking into account the size and location of the property. This situation, therefore, will theoretically make the Islamic banks become competitive in terms of the rate offered for their mortgages and more importantly it will ensure that the justice can be served to both rich and poor people accordingly, in line with the spirit of *Shari'ah*. Nonetheless, the use of rental index may require a careful consideration as Hasan (2011) reported that the data on area-specific rental normally published by town halls is too general and the time intervals are usually substantial. These made the rent unsuitable to be applied in individual cases. In addition, each house even in the same locality or building is distinct case for negotiation. For instance, level, location, open areas and parking may cause rental differences even in the same building complex. Therefore, it can be argued that the application of rental index may to a certain extent require extra cost on part of the banks particularly to appoint an independent valuer in determining the rental. However, an attempt should be made by using the rental index, as its implementation will portray the social dimension particularly for Islamic home finance. Otherwise, based on the interview findings with one of the Islamic economists, the use of interest rate to determine the rental in MM home financing will make such Islamic products similar to conventional housing loan, as apart from the partnership contract used, the remaining structure, treatment, and formula related to MM home financing still remain akin to its conventional counterparts. In other words, perhaps form related compliancy is achieved with MM home financing, but the industry should also aim at 'substance' related compliancy.

Hypothesis 3: The majority of the respondents apply equal importance to the price factor in which, Islamic mortgage is more expensive compared to conventional mortgage, along with other criteria as their reason for not using Islamic mortgage.

In order to response to hypothesis 3, the results in Table 8.27 in Chapter 8 reveal that 80% of the respondents (with a mean value of 3.56) perceived Islamic mortgage more expensive, which is the main reason for not choosing it. The finding suggests that based on hypothesis 2, although the main reason for choosing Islamic mortgage is driven by religious motives, the respondents still expect Islamic banks to offer competitive rates as compared to their conventional counterparts. In other words, in the absence of a competitive rate, the Islamic banks could only retain and attract pious Muslim and customers who are willing to pay more for the sake of having *Shari'ah* compliant products.

It can be further suggested that the Islamic banks must always ensure that their products are *Shari'ah* compliant at all times so as to retain the customers. As mentioned by Gerrard and Cunningham (1997) and Lee and Ullah (2011), there is a great probability that customers will be inclined to switch their banks if they observe any breach of the *Shari'ah* principles. This situation may also not support Islamic banks in competing with their conventional counterparts.

Therefore, it is crucial for the Islamic banks offering MM home financing to ensure this product fully adhere to the principles of *Shari'ah*, and in line with the *maqasid Shari'ah*. Moreover, as mentioned in Chapter 4, the Malaysian High Court had once held that since BBA contract was not in accordance with *Shari'ah*, (before been overruled by the appeal court) would also open more critics towards Islamic products offered by Islamic banks. Therefore, a fundamental issue is that Islamic banks should always ensure the products offered strictly comply with the principles of *Shari'ah* and they are not perceived to be similar to conventional products.

In addition, it can be further disputed that the public perceive the BBA home financing is more expensive compared to conventional mortgage due to the amount of the selling price stated in the financing agreement. In a normal practice, if the customer is able to pay the mortgage according to the payment schedule, the bank will give a rebate, thus make the end selling price quite competitive with the conventional counterparts. However, if the customer

fails to do so, the actual selling price is actually the amount that he/she has to pay to the bank and the rebate theoretically remains with the discretion of the bank.

Apart from that, while accepting hypothesis 2, the findings from the frequency analysis in Chapter 8 reveal that the issue of conveniences and services (with the mean values of less flexibility in terms of repayment: 3.45; less flexibility in terms of repayment period: 3.34; inconvenient repayment system: 3.16; bad quality service: 2.98) is also important. The respondents rated it second after the price factor for the reasons of not choosing an Islamic mortgage. Although it appears that due to small branching network of Islamic banks, those factors may lag behind, the findings suggest that Islamic banks should always strive to provide convenience and better services.

Hypothesis 4: The majority of the respondents do make comparison in deciding the best deal for choosing their mortgages.

Table 8.20 in Chapter 8 reveal that there are more than half of the respondents (66.5%) compared their mortgage in terms of Islamic and conventional mortgage, which suggests that the null hypothesis stating ‘a majority of the respondents do make comparison for the deciding the best deal for choosing their mortgages’ can be accepted. This result is consistent with Samad (2007), whose findings show that 53.4% of his respondents stated that they did make comparison before choosing the best deal for their mortgages. The results in this research, however, show a higher percentage of 66.5%. This is mainly due to the increasing level of promoting efforts from the mortgage providers, which result in customers’ increased knowledge in deciding the best mortgage.

In addition, based on the finding and hypothesis 2, it can be further argued that the issue of competitiveness on the mortgage product would remain the main concern for the respondents. Although, hypothesis 2 proves that religion is the main factor for choosing an Islamic mortgage, in reality, most of them are still concerned with the price except for pious Muslims.

Hypothesis 5: The majority of respondents apply equal importance to the ‘amount of monthly repayments’ factor along with other criteria in deciding the best deal for their mortgages.

The findings to be utilised for hypothesis 5 is presented in Table 8.23 in Chapter 8, which reveal that ‘amount of monthly repayments’ factor recorded the highest mean value (4.45) for the criterion in deciding the best deal for mortgages, and followed by ‘period of repayment’ (4.35), ‘capability to safeguard the customers’ interests’ (4.33) and ‘term of monthly repayment’ (4.32). Other criteria which are less important are ‘convenient repayment system’, ‘speedy processing and approval’, ‘quality of customer services’ ‘variety of product offered’ and ‘free consultation and enquiries’. Hence, based on the survey findings, it can be suggested that the null hypothesis 5 can be accepted.

The findings reveal that ‘amount of monthly repayment’ factor is the highest opted criteria by the respondents in comparing both the mortgage type, followed by ‘term of monthly repayment’ and ‘repayment period’. These confirm the results achieved by Samad (2007) and Al Mutairi (2010). The findings were further supported by the opinion of the bankers and legal experts in the interview conducted. They agree that the three most important factors for the customers in deciding the mortgage are rate, term and period of financing.

In addition, it is worth arguing that when a comparison is made between the present and Samad’s study (2007), the findings are interesting, since ‘capability to safeguard the customers’ interest’ ranks second after ‘amount of monthly repayment’. In other words, based on the survey findings, it can be argued that the customers are concerned with their financial interests in deciding the best deal for mortgages. They are willing to choose the type of mortgage which also protects their financial interest throughout the long term relationship with the mortgage provider.

It should be noted that the capability to safeguard the customers’ interests means that the capability of the mortgage offered in removing all the harms are normally available in conventional products. For instance, in the case of abandoned housing project, in a conventional system, the customer as a victim is liable to pay monthly instalment of the house to the bank irrespective of whether he lives in the property or not. However, in Islamic mortgage, the case of abandoned housing project is theoretically treated differently, as the risk of ownership is on the Islamic banks which act as the seller/partners. Therefore, in such a

case, Islamic banks are also responsible as it is their duty as a seller to ensure that the house sold is available to the customers. Failing to do so would trigger the prohibition of *gharar* which contradicts the *Shari'ah* principles. Therefore, it is important for the Islamic banks offering Islamic mortgage to highlight the inherent advantages or the ethical merits of Islamic mortgage while marketing their products (Tameme and Asutay, 2012). This factor may be able to attract more customers to opt for Islamic mortgage irrespective of the religious affiliations.

In addition, such an argument is supported by the interview findings with *Shari'ah* scholars and advisors. They stress that if the concept and implementation of Islamic mortgage is done by strictly adhering to the principles of *Shari'ah*, they will be able to realise the spirit of *Shari'ah* and become the best available mortgage. Past literatures (Chapra, 1992, Haron and Azmi, 2005) also support that since the intention of *Shari'ah* is to promote justice and care for the welfare of the society, Islamic products offered indeed have inherent advantages which can be realised by strictly complying with the principles of *Shari'ah*.

Hypothesis 6: The majority of the respondents perceive 'Islamic mortgage being more expensive compared to conventional mortgage' after making comparison.

The results related to the hypothesis 6 are presented in table 8.24 in Chapter 8. It reveals that 45.7% respondents perceive Islamic mortgage as more expensive compared to conventional mortgage after a comparison on both mortgages is made. Nonetheless, 17.9% of the respondents consider Islamic mortgage as a cheaper option compared to its conventional counterparts, while 17.3% believe that Islamic mortgage is as cheap or expensive as conventional mortgage and 19.1% are not sure. As such, it can be suggested that half of the respondents believe that Islamic mortgage is expensive, and hypothesis 6 can, therefore, be accepted. The findings further confirm the result obtained by Samad (2007) and Tameme (2010). They found that more than half respondents perceive that Islamic mortgage is more expensive than its conventional counterparts.

The interview findings with the bankers also reveal that in overcoming the problem, there are several attempts made by the Islamic banks which include the introduction of MM home financing. According to the vice president of *Shari'ah* department of one of Islamic banks, the price in MM home financing is similar to conventional mortgage. Therefore, he believed that the negative public perception that Islamic mortgage is more expensive than

conventional can be removed with the introduction of MM home financing, which is just as competitive. On the other hand, the interview findings with Islamic economists further reveal that, in order to be more competitive and appealing to the needs of the society, the use of rental index is the best solution as it is associated with the location and size of the property/house and not to the interest rate.

Based on the findings, it can be suggested that although the best way to be competitive is by using the rental index, the Islamic banks still feel uncomfortable to use this practice as it has never been implemented. Therefore, currently, while maintaining the same price with their conventional counterparts by benchmarking to the interest rate, it is beneficial for Islamic banks to remove unnecessary burden to the customers such as, second undertaking in the event of default. This effort will enable the Islamic banks to genuinely observe the principles of profit and loss sharing in MM. Furthermore, the extra effort in marketing MM home financing need to be made by emphasising on its inherent advantages associated with profit and loss sharing contract that will ultimately remove the negative public perception of that Islamic mortgage is more expensive.

Hypothesis 7: The majority of the respondents are satisfied with their mortgages chosen.

Table 8.29 in Chapter 8 reveal that 87.3% of the respondents are satisfied with their mortgages, suggesting that hypothesis 7 can be accepted. In addition, table 8.31 further reveal that 68.7% of the respondents with Islamic mortgage are more satisfied with their mortgage, while 31.3% respondents who opted for conventional mortgage are less satisfied. The findings confirm the previous research conducted by Samad (2007) and Al Mutairi (2010). They proved that as the respondents who chose Islamic mortgage due to ‘faith’ and ‘fixed monthly repayment’ factor, they would enjoy such ‘unchanging’ factors throughout the financing tenure. In contrast, for the respondents who chose conventional mortgage, their main driven factor to conventional mortgage is the price. They feel uncomfortable if the monthly instalment increased with the interest rate. The factors which determine their satisfaction and non-satisfaction levels are further elaborated in hypothesis 8 and 9.

Hypothesis 8: The majority of the respondents apply equal importance to the ‘fixed monthly repayment’ factor, along with other reasons contributing to their satisfaction on the mortgages chosen.

Table 8.32 in Chapter 8 shows that ‘the fixed monthly repayment’ factor recorded the highest mean rank of 4.37 as the main reason contributing to the respondents’ satisfaction toward the mortgages chosen. It is followed by ‘convenient repayment system’ with the mean value of 4.34, ‘good value for money’ with the mean value of 4.30, ‘the product is simple and clearly understood’ with the mean value of 4.28, ‘standardised contract’ with the mean value of 4.26, ‘competitive rate’ with the mean value of 4.25, and ‘fast process’ with the mean value of 4.24. Therefore, the findings suggest that hypothesis 8 can be accepted. ‘Fixed amount of repayment’ would enable the customers to manage their monthly mortgage in accordance with their house hold income, as when the term is fixed, they can easily plan their household expenses. This argument is also supported by Samad (2007) and Al-Mutairi (2010).

Hypothesis 9: The majority of the respondents apply equal importance to the ‘expensive monthly repayment’ factor, along with other reasons contributing to non-satisfaction on mortgage chosen.

In responding to this hypothesis, the descriptive result from Table 8.34 in Chapter 8 is used. It reveals that ‘expensive monthly repayment’ factor recorded the highest mean rank (4.45) for the reason that contributes to the respondents’ non-satisfaction on their mortgage chosen. The other reasons are ‘very complicated terms and conditions’ (4.21), ‘high penalty charged’ (4.21), ‘inconvenient repayment system’ (4.18), ‘lengthy and confusing contract and procedure’ (4.18), ‘no standardised contract’ (3.94) and ‘slow process’ (3.91). Therefore, it can be suggested that hypothesis 9 can be accepted. This finding mirrors the outcomes of the study conducted by Samad (2007).

It can be argued that price remains as the important motivation for customers in choosing and determining their satisfaction towards their mortgage chosen. This, however, does not apply to pious customers who regard religious factor as their main criteria in choosing the Islamic mortgage. This argument is also substantiated by the discussions in the preceding hypothesis 2, 5 and 6.

9.5.3 Respondents' Expectations of Islamic Home Financing

Besides perceptions, the customers' expectations of Islamic home financing are important in order to investigate what the society expects from Islamic home financing. Through this, the mortgage providers can strive to offer the best mortgage expected by the respondents, and will indirectly provide promising prospects for Islamic home financing in the future. Therefore, the following hypothesis is formulated with the aim to gauge the respondents' expectations of the Islamic home financing.

Hypothesis 10: The majority of the respondents apply equal importance to a factor on the capability of Islamic mortgage in safeguarding the customers' interests, along with other expectations' factors on Islamic mortgages.

In order to respond to hypothesis 10, the findings of the frequency analysis in Table 8.35 in Chapter 8 is used. According to the highest to the lowest mean value, the highest factor expected by the respondents is 'it should be able to safeguard customers' interests' (4.74), and followed by 'excellent quality services should be provided' (4.72); 'it should be *Shari'ah* compliant' (4.68); 'it should reflect the true spirit of Islam as required by *maqasid*' (4.62); 'explanation should be provided on working mechanism of the product and implication of it' (4.61); 'flexibility on repayment period should be given according to the needs of customer' (4.52); 'it should comparatively be cheaper' (4.52); 'suitable product should be provided for completed houses and houses under construction' (4.51); 'flexibility on term of repayment either fixed or variable rate should be given according to the needs of customers' (4.46); 'flexibility should be given for monthly repayment, for example payment holiday' (4.27); and 'it should not compete on prices, but should stress on its unique features' (4.19). Therefore, based on such results, it can be suggested that hypothesis 10 can be accepted.

Besides, factor analysis is also used to respond to hypothesis 10. The results are presented in Table 8.38 in Chapter 8. To reiterate, the results suggest that all eleven items of the respondents' expectations on Islamic mortgages are reduced into 2 components namely 'technical' and 'spirit and governance'. Technical aspects comprises of the following items: 'flexibility on term of repayment either fixed or variable rate should be given according to the need of customers'; 'flexibility on repayment period should be given according to the needs of customer'; 'flexibility should be given for monthly repayment, for example

payment holiday'; 'it should not compete on prices, but should stress on its unique features' and it should comparatively be cheaper. On the other hand, 'spirit and governance aspects' represent the following items: 'it should be *Shari'ah* compliant'; 'it should reflect the true spirit of Islam as required by *maqasid*'; 'it should be able to safeguard customers' interests'; 'suitable product should be provided for completed houses and houses under construction'; 'explanation should be provided on working mechanism of the product and implication of it' and 'excellent quality services should be provided'.

The findings show that the in ranking, the 'spirit and governance aspects' received the highest ranking of the mean value. Therefore, it can be argued that the respondents' expectations on Islamic mortgages are prone to *Shari'ah* and governance aspects rather than technical issues. This position is important, as it shows that society nowadays are more inclined to see the spirit of the Islamic products rather than the technical aspect. Furthermore, the respondents also expect that there should be explanation on the nature of contracts involved in the Islamic mortgage they enter into. Such an explanation is crucial to be aware of their rights and liabilities arising from the contracts. This finding seems to mirror the study conducted by Karim (2010), which showed that a majority of the depositors were interested in understanding and learning about the *Shari'ah* principles underlying the deposits account product that they have acquired or are going to acquire.

It can be suggested that the respondents expect that Islamic banks offering Islamic mortgage products are able to emphasise more on the inherent advantages associated in Islamic mortgage with the objective of protecting the respondents' interests. This can be substantiated by the findings discussed above, where the factor 'on capability to safeguard the interests of the customers' is ranked as the highest according to the mean value.

9.6 SUMMARY AND CONCLUSION

The preceding sections aimed at evaluating the hypothesis in establishing the general patterns that governs the perceptions and behaviours of the participants of this study. To render the results in a more systematic manner, the results of all the main hypotheses' testing are simplified and organised in Table 9.1 based on the majority positions.

Table 9.1: Summary of the Hypotheses Testing Decision

Hypothesis	Decision
Hypothesis 1 (i): The majority of the respondents do have fair level of awareness on the Islamic mortgage product based on BBA contract.	Accept H_0
Hypothesis 1(ii): The majority of the respondents do have low level of awareness on the Islamic mortgage product based on MM contract.	Accept H_0
Hypothesis 1(iii): The majority of the respondents do have low level of awareness on the Islamic mortgage product based on <i>istisna</i> ' contract.	Accept H_0
Hypothesis 2: Religious factor is the most important factor for using Islamic mortgage.	Accept H_0
Hypothesis 3: The price of Islamic mortgage which is perceived as expensive is the main factor for not using Islamic mortgage.	Accept H_0
Hypothesis 4: The majority of the respondents do make comparison in deciding the best deal for choosing their mortgages.	Accept H_0
Hypothesis 5: Amount of monthly repayments is the most important criteria in deciding the best deal for their mortgages.	Accept H_0
Hypothesis 6: The majority of the respondents perceive 'Islamic mortgage is more expensive compared to conventional mortgage' after making comparison on both.	Accept H_0
Hypothesis 7: The majority of the respondents are satisfied with their mortgages chosen.	Accept H_0
Hypothesis 8: Fixed monthly repayment is the main important factor contributing to respondents' satisfaction on the mortgages chosen.	Accept H_0
Hypothesis 9: Expensive monthly repayment is the main factor contributing to non-satisfaction on mortgage chosen.	Accept H_0
Hypothesis 10: The majority of the respondents expect Islamic mortgage capable to protect or safeguard the customers' interests.	Accept H_0

It is, hence, worth mentioning that based on the findings; the following three important issues can be mentioned.

- (i) Hypothesis 1 suggests that the general awareness of public in relation to Islamic mortgage products and in particular for MM need to be increased.
- (ii) Hypothesis 2 suggests that the respondents perceive religious factor as their main motivation for choosing Islamic mortgages, particularly those who are pious Muslims or customers who want to manage their cash flow easily through the term of repayment which is fixed monthly throughout the entire financing tenure. This means that, this group of respondents are willing to choose Islamic mortgage, although it appears that Islamic mortgage is more expensive compared to the conventional mortgages.
- (iii) On the other hand, hypotheses 3, 5, 6, 8 and 9 suggest that majority of the respondents still perceived price as an important factor in determining their choice and satisfaction of the mortgage selected. In other words, they will always choose the most competitive mortgage.
- (iv) Hypothesis 10 suggests that most of the respondents expected Islamic mortgage is able to safeguard the customers' interest. This implies that this constitutes a common view between the customers who choose and not choose Islamic mortgage. Therefore, it is important to note that, the competitive price in the MM product and its ethical merits (if the principles of profit and loss sharing are properly observed) seems to be an appealing factor to satisfy the needs of customers as a whole. These two factors are, therefore, important to attract the new customers irrespective of their religious affiliations and also retain existing ones. In other words, if these two factors are fulfilled, the future prospect of MM product seems to be very promising.

In conclusion, based on the preceding discussions in relation to interview and survey analysis, the following main findings and conclusions are derived as a general pattern:

(i) Current operation of MM home financing

The operation of MM home financing in Malaysia does not really appreciate the principles of profit and loss sharing as prioritised by Islamic moral economy, as the use of purchase undertaking particularly during the event of default seems to mirror MM home financing with conventional mortgage. Furthermore, failing to strictly observe the principles of profit and loss sharing contract as part of the whole home financing contract could also trigger another *Shari'ah* issues. For instance, issues relating to *takaful* and maintenance of the house. Although the concept profit and loss sharing appear in the *musharakah* contract between the banks and the customers particularly in reflecting the co-ownership held by them over the house, the rest of the contract is influenced by debt based financing or conventional counterparts, and the spirit of *Shari'ah* related to profit and loss sharing contracts fail to surface.

(ii) Inadequate legal framework

The current legal structure is not duly in place to cater for the implementation of MM product which is equity financing in nature. Furthermore, the current practice remains uncertain as there is no precedent and no single case has so far been brought before the court of law on the legality of such practices.

(iii) Root of Problems faced by Islamic banks

Since MM home financing is the first ever Islamic mortgage with the element of equity financing, there are many problem faced by Islamic banks. This includes risk weight, and bank staffs having lack of knowledge in implementing such a product in order to make sure that its implementation is kept away from traditional debt financing. Therefore, in order for Islamic banks to appreciate MM home financing that emphasise the element of profit and loss sharing as part of its contracts, the way of thinking should be changed as it is crucial when dealing with the problems faced by Islamic banks in implementing MM home financing.

(iv) Customers' awareness on Islamic mortgage products

Majority of the respondents have a good level of awareness of BBA home financing, as it is the sole product of Islamic mortgage offered since the inception of IBF in Malaysia about

three decades ago. On the other hand, a majority of the respondents have low level of awareness of the MM home financing as it was implemented in the last 7 years. In relation to *istisna'* home financing, although it has been offered similar to BBA in term of existence, the respondents' awareness is also low because it is only offered by Bank Islam Malaysia Berhad (based on *Inah* contract as BBA).

(v) Take-up Reason

Religious factor is the main motivation factor for the respondents in choosing the Islamic mortgage irrespective of, after making a comparison, the perception that it is more expensive compared to the conventional mortgage.

(vi) Reasons of not taking up

The results show that the price factor is an important factor for the respondent who did not choose Islamic mortgage. However, it should be noted that the price of MM is similar to the conventional mortgage, and indirectly cheaper than BBA home financing. Like BBA, the rental of MM is, however, still benchmarked to conventional interest rate and not the rental index, thus it delinks the property from the exact value of the property, as a consequence.

(vii) Customers' expectation to Islamic mortgage

Majority of the respondents expect the 'Islamic mortgage could be able to safeguard their interest'. This factor should also be treated with consideration by Islamic banks as it appears to be a meeting point or common view shared and expected by all the respondents, either those have choose the Islamic mortgage or not. Therefore, capable of fulfilling this factor will ensure a promising future for MM home financing (Smolo, 2010; Tameme and Asutay, 2012).

(viii) Spirit and governance aspects vs. technical aspects

Regarding the respondents' expectation of Islamic mortgage, the findings reveals that nowadays, the respondents are perceived to be more concerned about the spirit and governance aspects of the Islamic mortgage. Nonetheless, other aspects of technical matters, for instance, price and flexibility of the products offered are also deemed important.

Thus, after establishing the main findings of the study, the following chapter brings the research to an end by providing the general conclusion.

CHAPTER 10

IMPLICATIONS AND CONCLUSIONS

10.1 INTRODUCTION

This study was conducted with the objective of exploring and examining the challenges and prospects of MM home financing in Malaysia as a newly implemented Islamic home financing instrument. In achieving this broad objective, the views of various stakeholders who are involved directly in offering MM home financing are obtained through interviews. Then, the customers' views on Islamic mortgage are also obtained through the survey questionnaire. The results were analysed and compared with the relevant literature.

This chapter briefly recapitulates the salient conclusions derived from the findings. In addition, the main policy implications and practical recommendations to enhance the current practice of MM home financing in Malaysia, particularly on the aspects of profit-sharing contract in light of the spirit of *Shari'ah* requirements, are presented. The study's limitations and recommendations for the future research are also presented in this chapter.

10.2 REFLECTING ON THE FINDINGS OF THE RESEARCH

This research has attempted to explore and evaluate the current practice of MM home financing in Malaysia whereby its challenges and prospects, as a new mode of Islamic home financing stressing equity based financing nature, are analysed. In order to achieve the objectives, a triangulation of qualitative and quantitative research methods have been employed to find the answers to the questions of 'what, how, why and so what' has happened in the current practice of MM home financing in Malaysia.

As part of the qualitative research method, the interview findings reveal that the implementation of MM home financing is an attempt to overcome the difficulties created from the contentious mode of BBA home financing, as the latter is considered debt based financing and mimicking the conventional counterpart. Thus, MM home financing aims to develop a more equity based financing which is derived from the Islamic contract of profit

and loss sharing concept. As MM has been available in the market for the last 5 years, there are indeed very significant issues that warrant special attention particularly in ensuring that the purpose of *maqasid al-Shari'ah* could be realised, and benefit the customer and contribute to the social welfare.

The interview findings also revealed that the debt based financing nature dominates the MM product, particularly with the presence of purchase undertaking which can arguably serve as a guarantee for the bank on capital granted for the financing. In addition, the event of default is also treated similar as in the conventional system, as MM completely neglects the spirit of profit and loss sharing concept, which consequently undermines the concept of 'justice' which is the core element in the partnership contract and reject the idea of having equity based financing.

Current legal framework works according to the debt based financing, which is therefore alien to equity based financing. Thus, in a certain circumstances, the application of the legal matters in MM home financing does not have any precedence, as there is no single case been tested before the court of law. Although modifications from the theory may to certain extent is necessary in order to suit and balance the theory and practice of equity financing, such modifications should be done in caution to ensure that the spirit of *Shari'ah* is always upheld. Therefore, a dynamic and critical approach is urgently required to change the mindset of all the stakeholders by treating MM home financing in more equitable manner by strictly complying with the principles of *Shari'ah* on profit and loss sharing as an essential requirement.

As regard to the demand side, survey analysis reveals that the awareness on this product is considerably low, as it was newly introduced. As such, Islamic banks should rigorously increase the awareness campaign related to Islamic housing finance by stressing the inherent advantages associated with MM home financing, rather than label it as similar as to the conventional counterpart.

Although religious factor remains the main patronising factor in Islamic mortgage, as found by this study, it would only be relevant for the pious Muslims and, therefore, it would rather be difficult to attract the new ones. Thus, convenience and competitiveness in the marketing of this product should be taken into consideration to ensure a promising future of MM home financing in Malaysia. In this regard, it is interesting to note that, as the interview analysis

depicts, the bankers consider that current price of MM home financing is as competitive as the conventional counterpart, and therefore, cheaper than BBA home financing. More importantly, the findings of the questionnaire survey demonstrate that there is a growing need in the society to see whether Islamic mortgage capable of safeguarding their interests from the harms that are normally associated with conventional mortgage. Therefore, this point could be considered as the key finding to further market MM home financing product through emphasising this particular feature.

In summary, there is always a room for improvement for MM home financing that is currently practiced in Malaysia, particularly in realising the spirit of *Shari'ah*. Therefore it has a promising future and will benefit the society irrespective of their religious affiliations.

10.3 RESEARCH IMPLICATIONS AND RECOMMENDATIONS

As mentioned in Chapter 1, the present study was motivated by a belief that there is a gap between the theoretical aspects of MM home financing as defined in relation to Islamic moral economy, and its real practice implemented by the Islamic banks offering this product. Therefore, the results carry implications for various stakeholders in pursuing the ultimate objectives of the Islamic banking system. In addition, this research also contributes to the existing academic research in terms of opening up new areas of study, which also renders valuable input to industry practitioners to improve current regulations and practice related to the operational and practical aspect of the product. The findings may also prove to be very useful to promote business growth from the perspective of marketing strategy. This section briefly examines the implications of this study in relation to a number of aspects:

10.3.1 Implications for Knowledge Generation and Development

As regard the implication of this research for knowledge development, it should be noted that it has successfully served in addressing the knowledge gap and scarce of the literature. In addition, this study also covers a comprehensive approach by triangulating the methods to address the issues from the perspectives of both the supply and demand side of Islamic home financing industry. Moreover, the questionnaire survey conducted by this study on MM home financing has successfully contributed to the literature particularly on the empirical evidence on the customers' expectation on Islamic mortgage, while the interviews offered significant knowledge on the supply side of the MM home financing as the interviewees involved the practitioner, bankers and *Shari'ah* advisors who actively involved in the implementation of

MM home financing. Consequently, this study also contributes to knowledge development, which is imperative in shaping the future of IBF industry.

10.3.2 Implications for House Buyers/Customers of Islamic Banks

In relation to clients of Islamic mortgages, this study suggests that the interests of house buyer could be further protected provided that proper implementation is practiced by emphasising the element of profit and loss sharing contract in the light of *Shari'ah* requirements. This can be possible by removing all the financial and ethical difficulties typically associated with conventional counterparts. In addition, campaigns and appropriate marketing strategy could also be conducted by highlighting all the inherent advantages and ethical merits associated with MM, which offer the public with awareness. The survey findings also indicates that the Islamic banks need to make appropriate marketing strategy to target group buyers whose the age group is between 31-40 years old, as this group tend to hold secure jobs and income, and the need for homeownership increase.

10.3.3 Implications for Professional Islamic Bankers and Financiers

It is worth mentioning that public expectation on Islamic mortgage is more on the ethical or spirit and governance aspect. Such expectations could only be realised if the inherent advantages and the ethical merits of MM are done and seen to be done. Thus, banks should improve their current practice in line with *Shari'ah* requirements by adhering to all the principles of profit and loss sharing contract as part of the whole contract of MM home financing. Although in its infant stage, the motive is always guided by profit, social dimension should also surface in the course of time. More importantly, the Islamic bankers need first to educate and inform their employees, customers, and stakeholders on the virtues and principle of Islamic Finance.

Attempts such as removing all the conditions that can cause injustice to the customers must be taken up. The findings of this study also give signals for Islamic bankers to provide better strategy in promoting and marketing MM home financing by emphasising its advantages, and highlighting differences between Islamic and conventional mortgage, and identifying ethical advantages of Islamic mortgage which is normally not available in its conventional counterparts.

10.3.4 Implications for Regulators and Policy Makers

Since the current legal framework seems alien to equity based financing, amendment to the relevant laws to accommodate MM home financing as equity financing is necessary for the development of Islamic finance sector. Furthermore, it would be ideal if the regulators would impose obligations in removing unnecessary terms and conditions, for instance, purchase undertaking in the event of default by providing the necessary and proper parameters in order to safeguard the element of profit and loss sharing as part of the whole contract constituting MM home financing. The regulator/government, through the ministry of education should also introduce Islamic Finance courses at different levels of education, for instance, from the primary school until university level.

10.3.5 Implications for the Society as a Whole

MM home financing, which has the element of profit and loss sharing contract, if properly done, could benefit house buyers from the social problems, for instance, abandoned housing projects. In addition, equity aspect of the financing can positively contribute to the general welfare of the society and provide better alternative to all irrespective of their religious affiliations.

It should also be noted that the use of rental index would also serve better justice to poor and rich people, as the amount of rental may vary according to the size and location of the property. To reiterate, based on interview findings with the legal expert and Islamic economists, the amount for rental index is always lower compared to the current instalment amount based on interest rate.

10.4 LIMITATIONS OF THE RESEARCH

Based on the data gathered through questionnaire and interview surveys, this research should be considered to be successful in examining the challenges and prospects of MM home financing in Malaysia. It is, however, inevitably agreed that there are several limitations in this study as in any other social science project.

Firstly, the research is conducted as an empirical research, which constitutes the main contribution of this research. However, since it aims to explore the legal framework of MM home financing in Malaysia, it would have been extremely useful and enriching to analyse the legal documentations and loan agreements thereby the detailed understanding of the issues raised in this study could have been verified beyond the positions of the interviewees. However, access to such documents is not facilitated by the Islamic banks, and therefore, could not be undertaken.

Secondly, the researcher had a limited time and financial means in terms of administering the survey, whereby the distribution of questionnaire survey mainly concentrated on the area of Klang Valley. A more rigorous result is expected if the researcher could have undertaken the questionnaire in other parts of Malaysia, for example Johor, Kelantan and Kedah. Thus, although the results of the survey cannot be generalised to the society at large, they still provide valuable contribution, particularly to the mortgage providers as the respondents from the Klang Valley could be considered the most appropriate respondents, which, as having the capital city, is the most developed region of the country with people of guaranteed monthly income and access to Islamic banks and Islamic mortgage.

Thirdly, the limitation is also on the scarcity of existing empirical literature on specific instrument of Islamic home financing. To the best understanding of the researcher, the available body of knowledge is very much devoted to the type of Islamic home financing in general, for example, *murabahah*, *ijarah*, *musharakah mutanaqisah* and *istisna'* without detailing on how the specific instrument of Islamic home financing works in certain countries. It should also be noted that a few studies aimed at eliciting the perception of Muslims on Islamic home financing, but such attempts have excessively concentrated on the demand side of the Islamic home financing. This research, however, has attempted to evaluate how a specific instrument or mode of Islamic home financing product works in the Malaysian context from both supply and demand side.

10.5 SUGGESTIONS FOR FUTURE RESEARCH

Having mentioned the study's limitations, this section aims to make suggestions for future research, as follows:

(i) Future studies may expand the scope of the sample by enlarging the geographical coverage by covering other regions and states in Malaysia.

(ii) Future research may also consider possible collaboration with the industry and the practitioners including the regulators and Islamic banking players, in order to support the objectives of the research. In this study or other similar studies, the support from regulators and the banks is essential in encouraging the Islamic banks to assist in distributing the questionnaire to the customers who particularly hold the MM Islamic home financing.

(iii) Such cooperation would, therefore, enable the researcher to use probability sampling techniques. The outcome of random sampling may enable the researcher to obtain data that are more representative and assist researchers to achieve more conclusive analysis by using robust statistical tools. The conclusions from such studies may be used by the regulators and Islamic banking players to improve the industry as whole.

(iv) It is also recommended that in order to develop an in-depth understanding, future research focus on certain topic related to Islamic housing finance, such as suitability of Islamic home financing contracts from practical point of view, *Shari'ah* issues in MM home financing and legal issues in MM home financing. The concentration on a certain topic may produce in-depth discussions on the matters related to Islamic housing finance.

(v) It is also be fruitful if the future research conducts a comparative study between the implementation of MM home financing in Malaysia and the other countries, for instance, Australia, United Kingdom and Kuwait, to develop an understanding of best practice in MM home financing that is consistent with the spirit of *Shari'ah*.

10.6 EPILOGUE

This research is undertaken with the aim to analyse the challenges and prospects of MM home financing in Malaysia, since MM home financing is deemed to be a better alternative compared to BBA home financing. Apart from partnership contract applicable in MM, it is treated as similar as conventional mortgage or debt based financing which mimics the conventional counterparts.

It is noted by this study that based on the element of profit and loss sharing in MM, it has a potential to provide a better protection to house buyers overcoming the financial and ethical shortcomings of debt based financing. However, such advantages could only be achieved by strictly adhering to the principles of *Shari'ah* relating to profit and loss sharing contract. As long as the principles and spirit required by *Shari'ah* are not neglected; careful modifications is essential to suit the practice, taking into account the legal environment which is not familiar with equity based financing.

Several recommendations have been proposed in terms of developing a socially and financially efficient and effective MM homes financing in the interest of all the stake holders. It is hoped that some, if not all results of this research, will be applied by any of the stakeholders of Islamic banking in Malaysia.

As the research presented in this study indicates in the form of empirical and foundational chapters, the identified aims and objectives of the research has been achieved, and this study, as a result, contributes to our understanding how a particular Islamic home financing instrument is perceived to be working in the context of Malaysia.

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APPENDICES

Appendix 1

Interview guide

1. From your experience and understanding, can you please explain the operation of Islamic home financing based on Musharakah Mutanaqisah in light of Shariah issues associated in it?

(Ownership, maintenance, rental, takaful, uniformity of the documentation, unilateral promise (*wa'd*), event of default, sale of thing which is not exist (*gharar*).

2. How is MM legally operated now?
Based on conventional concept
Principles of partnership and ijarah (*shariah* perspective)
Not sure
3. What are the legal constraints in implementing Musharakah Mutanaqisah home financing in Malaysia?
4. Do you find the current law adequate to govern the operation of MM?
Yes
No
Not sure
5. Are there any pertinent problems arising from the current practice of MM? If yes, could you please explain such problem(s)?
6. How do you foresee the future of MM as a better alternative for Islamic home financing?
7. From your opinion, to what extent has MM been accepted by the bank and banks' customer?
8. Additional information and issues pertaining to the operation of MM in Malaysia (if any).
9. Any additional issues in contract/documentation?

Appendix 2



School of Government and International Affairs,
Durham University
United Kingdom
Email: hanira.hanafi@durham.ac.uk

A Survey of Customers' Perception and Expectation on ISLAMIC HOME FINANCING

This survey aims to find out customers' perception and expectation on Islamic home financing. Therefore, being a homebuyer, I would like to seek your cooperation to give your valuable opinion which will contribute towards the success of this research. Not only is this survey highly important to my research, but also, I believe that it can be of great benefit to the future of Islamic housing finance and the consumers (respondents) as well.

Most of the questions merely require you to tick the appropriate box. All the information given will be treated in the strictest confidence and shall only be used for the academic research purposes. Your participation in this research is greatly appreciated.

General Instructions and Information

1. All individual responses to this questionnaire will be kept **STRICTLY CONFIDENTIAL**.
2. Please do not worry about questions that seemingly look alike. If you do not have the exact answer to a question, please provide your best judgment by ticking the appropriate boxes in the questions. Your answer is very important to the accuracy of the study.
3. If you wish to make any comment, please feel free to use the space at the end of the questionnaire.

Please return the completed questionnaire in the enclosed self-address, stamped envelope before _____.

For office use only:

Date of Questionnaire returned: ____/____/2010

Time of Survey: _____am/pm

Respondent Number: _____

SECTION 1: CUSTOMERS' PERCEPTIONS ON ISLAMIC MORTGAGE

Please tick () in an appropriate box

Questions on the housing mortgage product

1. Who is your mortgage provider?
 - ☐ Bank
 - ☐ Government
 - ☐ Company
 - ☐ Others(please state) _____

2. What type of housing mortgage did you take out?
 - ☐ Islamic (Proceed to question 3)
 - ☐ Conventional (Proceed to question 4)

Questions on the perception of Islamic mortgage

3. Please state your opinion on the following factors contributing to your **reasons** for using Islamic home financing.

No		Not Important At All	Not Important	Neutral	Important	Very Important
a.	Religious factor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Fixed monthly repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Competitive rate offered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Recommendation from friends and family	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Convenient payment system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Excellent quality service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Please state your opinion on the following factors contributing to your **reasons** for not using Islamic home financing.

No		Not Important At All	Not Important	Neutral	Important	Very Important
a.	Expensive compared to conventional	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Less flexibility in the terms of repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Less flexibility in terms of repayment period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Bad quality service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Inconvenient payment system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Do not know on its existence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Questions on product comparison

5. In deciding the best deal, did you compare between the Islamic products with the conventional one?
 - ☐ Yes, I did compare (Proceed to question 6)
 - ☐ No, I did not compare (Proceed to question 8)

6. In comparing between the Islamic and the conventional mortgage products, which criterion was important to you?

No		Not Important At All	Not Important	Neutral	Important	Very Important
a.	Amount of monthly repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Period of repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Term of repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Quality of customer services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Speedy processing and approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Convenient repayment system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Variety of products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h.	Free consultation and enquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i.	Capability to safeguard the customers' interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. Did you find the Islamic housing mortgage product cheaper or more expensive than the conventional one in terms of monthly repayment?

- ☐ Islamic mortgage is cheaper than the conventional one
☐ Islamic mortgage is more expensive than the conventional one
☐ Islamic mortgage is as cheap/expensive as the conventional one
☐ I am not sure

Questions on product awareness

8. Do you aware of the existence of the following Islamic home financing products?

No	Instrument/Product	Not Aware At All	Not Aware	Do Not Know	Aware	Very Aware
a.	<i>Bay Bithaman Ajil</i> (Sale on Deferred Payment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<i>Musharakah Mutanaqisah</i> (Diminishing Partnership)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<i>Istisna'</i> (Manufacturing Sale)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Questions on repayments of mortgage

9. **How long** have you been making your monthly **repayments** to your mortgage provider?

- ☐ Less than 2 year
☐ 2 – 5 years
☐ 6 – 10 years
☐ 11 – 15 years
☐ More than 15 years

10. What is the **term** of your monthly repayments?

- ☐ **Fixed rate** throughout the period of my housing finance
☐ **Variable rate** throughout the period of my housing finance
☐ Others (please specify) _____

Questions on the property

11. **From where** did you purchase your property?
- ☐ From a developer and is **still under construction**
- ☐ From a developer and is a **completed house**
- ☐ From a previous owner
- ☐ Others (please state) _____
12. **Have you moved in** to your new house of which you are currently paying the mortgage for?
- ☐ Yes, I have already moved in (*Proceed to question 14*)
- ☐ No, I have not moved in yet (*Proceed to question 13*)
- ☐ I am in the process of moving in (*Proceed to question 14*)
13. If you have **not moved in** to your new house, what is the **reason** for this?
- ☐ The house is not yet ready
- ☐ The house is ready but I am not ready to move in there yet
- ☐ I am renting out the house to earn extra income
- ☐ Other reason (please state) _____

Questions on satisfaction

14. Do you find your home financing **satisfactory** so far?
- ☐ Yes, I found it satisfactory (*Proceed to question 15*)
- ☐ No, I do not find it satisfactory (*Proceed to question 16*)
15. If you have found your home financing **satisfactory**, please express your opinion on how much the following factors contribute to your satisfaction.

		Not Important At All	Not Important	Neutral	Important	Very Important
a.	Convenient repayment system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Fixed monthly repayment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Standardised contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	Good value for money	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	The product is simple and clearly understood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Fast process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Competitive rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. If you have found your home financing **not satisfactory**, how much these following reasons contribute to your dissatisfaction.

		Not Important At All	Not Important	Neutral	Important	Very Important
a.	Inconvenient repayment system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Very complicated terms and conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	No standardised contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	High penalty charged	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Lengthy and confusing contract and procedure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Slow process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Expensive monthly instalment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION 2: CUSTOMERS' EXPECTATIONS ON ISLAMIC MORTGAGE

17. Please state your opinion on the expected nature of Islamic home financing products.

		Strongly Disagree	Disagree	Do Not Know	Agree	Strongly Agree
a.	It should be Shariah compliant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Flexibility on term of repayment either fixed or variable rate should be given according to the need of customers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	It should not compete on prices , but should stress on its unique features	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	It should comparatively be cheaper	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Flexibility on repayment period should be given according to the needs of customer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Flexibility should be given for monthly repayment , for example payment holiday	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	Suitable product should be provided for completed houses and houses under construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h.	Explanation should be provided on working mechanism of the product and implication of it	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i.	It should reflect the true spirit of Islam as required by maqasid	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j.	Excellent quality services should be provided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k.	It should be able to safeguard customers' interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION 3: PERSONAL INFORMATION

18. Gender:

Male

Female

19. Age:

Below 20

41 – 50

21 – 30

Above 50

31 – 40

20. Religion:

Muslim

Christian

Buddhist

Others – *(Please specify)*

Hindu

21. Highest Education Level:

Primary/Secondary School

Professional Qualification

College Diploma/Matriculation/A-Level

Postgraduate (Master or PhD)

Bachelor (First Degree)

Others *(Please specify)*:

22. Occupation:

Manager/Executive

Merchant/Businessman

Professional (lawyer, engineer,
accountant, doctor etc.)

Farmer

Unemployed

Academician / Education

Retired

Small Business

Housewife

Others – *(Please specify)*

Student

I would like to express my utmost gratitude for volunteering to participate in this survey. If there is anything else you would like to tell us about this survey or other comments you wish to make relating to Islamic home financing and issues arising thereof, please do so in the space (box) provided below.

Appendix 3

Type	Institution/ Name	Bil	Company/Person	Expertise
Bank	Kuwait Finance House	1.	Abdul Hakim Osman	Head Shariah Division
		2.	Mohamed Nazli Mohamed Nawawi	Senior Manager-Legal
		3.	Alida	Head Product Development
	RHB Islamic bank	4.	Zubir Awang	Shariah Advisory Dept
		5.	Mohd Hafiz	Secretariat Shariah Committee
	Maybank Islamic	6.	Rusdi	Head of Islamic Banking Division
		7.	Norrana Jidin	Head of Consumer Banking Product management
	HSBC Amanah	8.	Mohamed Khairul Anuar Mohd basri	Head of Shariah
	OCBC Al Amin	9.	Mr. Wan Mohd Ghazni	Vice President Product Development
Regulator	Bank Negara Malaysia	10.	Ismail Nik	Manager, Islamic Banking and Takaful Department
Shariah Scholar/ Advisor	Assoc Prof. Dr Engku Rabiatal Adawiyah	11.	Lecturer IIUM Shariah Advisor Bank Muamalat	Islamic Banking and Finance
	Assoc Prof Dr Asyraf Wajdi Datuk Dusuki	12.	Head of Research ISRA Shariah Advisor Affin Islamic Bank	Islamic Banking and Finance
	Assoc Prof. Dr Nurdianawati Irwani Abdullah	13.	Lecturer IIUM Shariah Advisor Saadiq Bank	Islamic Banking and Finance
Legal Expert	Megat Hizaini Hassan	14.	Zaid Ibrahim	Head of Islamic Banking Division
	Mr. Ahmad Lutfi Abdul Mutalip	15.	Azmi & Associates	Head of Islamic Financial Services
	Farhah Hayati	16.	Azmi & Associates	Senior Associate of Islamic Financial Services
Economist	Dr. Dzuljastri Abdul Razak	17.	Programme Coordinator, IIUM Institute of Islamic Banking and Finance	Islamic Banking and Finance
	Prof Dr Ahmad Kameel Mydin Meera	18.	Lecturer IIUM	Islamic Finance
	Prof Dr Abdul Ghafar Ismail	19.	Lecturer UKM Shariah Advisor for CITIbank	Islamic Finance